

2010

# State of Utah v. Ramon A. Juma : Brief of Appellant

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

STATE OF UTAH,

Plaintiff,

-VS-

RAMON A. JUMA,

Defendant.

Appellate Case No.: 20100492

(6<sup>th</sup> District No.: 091600075)

## OPENING BRIEF OF APPELLANT RAMON A. JUMA

This is an appeal from the final Order of Judgment and Sentence of the Sixth Judicial District Court at Richfield, Utah, after the Conditional Guilty Plea of Defendant Ramon A. Juma to Possession of a Controlled Substance with Intent to Distribute (marijuana), a Third Degree Felony, on June 15, 2010, wherein Defendant Reserved his right to Appeal the Decision of the District Court, Hon. Wallace A. Lee, Judge, denying Defendant's Motion to Suppress Evidence, dated and filed March 10, 2010.

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STATE OF UTAH, :  
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 Plaintiff, :  
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 -VS- :  
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 RAMON A. JUMA, : Appellate Case No.: 20100492  
 :  
 Defendant. : (6<sup>th</sup> District No.: 091600075)

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**THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT DENIED MR. JUMA’S MOTION TO SUPPRESS EVIDENCE ON GROUNDS OF THE LACK OF REASONABLE SUSPICION TO STOP AND DETAIN DEFENDANT; ON GROUNDS OF EXCESSIVE DETENTION OF THE DEFENDANT; ON GROUNDS OF THE DISSAPATION OF ANY REASONABLE SUSPICION; ON GROUNDS OF VIOLATING JUMA’S DUE PROCESS AND OTHER CONSTITUTIONAL RIGHTS AGAINST UNREASONABLE SEARCH AND SEIZURE; ON GROUNDS OF LACK OF PROBABLE**

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#### IV. **JURISDICTION**

The Utah Supreme Court had original appellate jurisdiction in this matter pursuant to Utah Code Ann. § 78A-3-102(3)(f). The Utah Court of Appeals now has jurisdiction of this matter pursuant to Utah Code Ann. §78A-4-103(2)(e).

#### V. **ISSUES FOR REVIEW**

Ramon Juma, having entered a conditional guilty plea to possession of controlled substance with intent to distribute, a 3<sup>rd</sup> degree felony, and having reserved his right to appeal the trial court's denial on his motion to suppress evidence (Record at 65-75), asserts the following issues on appeal:

1. Whether the trial court erred when it ruled that there was reasonable articulable suspicion to support the stop and detention of Juma. (Record, 22-43, 65-75, 107)

**Standard of Review:** Mr. Juma argues that the trial court erred by denying his Motion to Suppress. On review of both criminal and civil proceedings, the appellate court accepts the trial court's findings of fact unless they are clearly erroneous. *Von Hake v. Thomas*, 759 P.2d 1162, 1172 (Utah 1988); *see also*, *State v. Ison*, 2006 UT 26, ¶ 22, 135 P.3d 864 (defining a factual finding). "We review the trial court's ruling on a motion to suppress for correctness, without deference to the trial court's application of the law to the facts." *Layton City v. Oliver*, 2006 UT App 244, ¶ 11, 139 P.3d 281 (citing *State v. Brake*, 2004 UT 95, ¶ 15, 103 P.3d 699).

2. Whether the trial court erred in finding that the detention of Juma was Not Excessive or Beyond the Scope of the Original Stop. (Record, 22-43, 65-75, 107).

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of the law to the facts." *Layton City v. Oliver*, 2006 UT App 244, ¶ 11, 139 P.3d 281 (citing *State v. Brake*, 2004 UT 95, ¶ 15, 103 P.3d 699).

3. Whether the trial court erred in denying the Motion to Suppress under circumstances where any basis in fact for reasonable articulable suspicion of criminal activity had dissipated.  
(Record, 22-43, 65-75, 107).

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4. Whether the trial court erred as a matter of law in denying the Motion to Suppress Evidence where Trooper Bowles conducted a search of the interior of the vehicle and the closed containers therein, absent exigent circumstances, without first seeking and obtaining a search warrant, based on Probable Cause, in

violation of both the Fourth Amendment and Article I Section 14 of the Utah Constitution. (Record, 22-43, 65-75, 107).

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## VI.

### **DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES AND REGULATIONS**

#### **CONSTITUTIONAL AUTHORITIES**

United States Constitution, Amendment IV

Constitution of the State of Utah, Article I, Section 14

#### **STATUTES:**

UCA § 41-6a-904

UCA § 58-37-8(1)(a)(iii)

UCA § 58-37-8(2)(a)(i)

UCA § 77-7-15

UCA § 78A-3-102(3)(f)

UCA §78A-4-103(2)(j).

**VII.**  
**STATEMENT OF THE CASE**

**A.**  
**NATURE OF THE CASE**

This is an appeal from the Memorandum Decision and final Order of the Sixth Judicial District Court for the State of Utah, Sevier County, Richfield Department, the Hon. Wallace A. Lee, Judge, denying Defendant Ramon Juma's Motion to Suppress Evidence. (Record, 65-75).

Juma had sought the exclusion of all evidence for reason that the seizure of his person and vehicle, detention, and subsequent search and arrest were unlawful, and violated his Constitutional rights under both the Fourth Amendment and under Article I, Section 14 of the Utah Constitution. Juma argued that the motor vehicle stop by police was without any reasonable articulable suspicion of any violation of traffic, equipment or other laws; that his detention by police after the stop exceeded the scope of the original stop; that any reasonable suspicion dissipated upon the police issuing a warning citation to the driver of the vehicle; and that the additional detention by police to conduct a drug dog sniff of the vehicle did not establish sufficient probable cause to permit the police to search the vehicle without first obtaining a search warrant, arguing that no exigent circumstances existed to justify the warrantless search.

**B.**  
**COURSE OF PROCEEDINGS AND DISPOSITION IN THE TRIAL COURT**

Defendant/Appellant Ramon Juma was arrested on March 31, 2009 in Sevier County, Utah and charged by Information with one count of possession of a controlled substance, to wit: more than one pound but less than 100 pounds of marijuana, with intent to distribute, in violation of Utah Code Ann. §58-37-8(1)(a)(iii), and one count of possession of a controlled substance, cocaine, in violation of Utah Code Ann. § 58-37-8(2)(a)(i), on April 3, 2009.

Upon bind over after conducting a Preliminary Hearing on August 11, 2009, Juma Moved to Suppress the Evidence against him. A Suppression Evidentiary Hearing was held on September 22, 2009, and the issues were briefed by all parties. The trial court denied Juma's Motion to Suppress in its Memorandum Decision dated March 4, 2010.

After the trial court denied the Motion to Suppress Evidence, Juma entered a Conditional Guilty Plea on June 15, 2010, to the single count of possession of marijuana with intent to distribute, reserving his right to appeal the trial court's denial of the Motion to Suppress; the remaining count of possession of cocaine was dismissed. Juma waived time for sentencing, was sentenced to 0 – 5 years at the Utah State Prison; however, the sentence



was stayed by the trial court while Juma appeals the denial of his suppression Motion, and he remains free on an appeal bond and other conditions imposed by the trial court.

Juma timely filed his Notice of Appeal on June 15, 2010 with the District Court in Richfield.

**C.**  
**STATEMENT OF FACTS**

1. On March 31, 2009, at about 9:30 a.m., Trooper Nick Bowles of the Utah Highway Patrol was conducting traffic patrol along Interstate 70 in Sevier County, when he observed a black Chevrolet sedan enter the freeway behind a semi-trailer, both going eastbound. Both the semi and the Chevy remained in the right (outside) lane as they passed several Utah Department of Transportation (UDOT) maintenance vehicles along the outside shoulder, which were not in or obstructing any lanes of traffic. (Record at 66; Record at 106, Preliminary Hearing Transcript, pp. 13-16; Record at 107, Suppression Hearing Transcript, pp. 14, 37).
2. Although the adjacent left lane on the freeway was unoccupied, neither the semi, nor the Chevy, moved over or changed lanes as each approached and then passed the UDOT vehicles. (Record at

66; Record 106, Preliminary Hearing Transcript, p. 18; Record at 107, Suppression Hearing Transcript, p.14).

3. The UDOT vehicles were displaying flashing “amber” or commonly known as yellow lights; none of the stopped vehicles displayed any lighted or flashing red, white or blue lights, alone or in any combination. (Record at 106, pp. 16-18; Record at 107, p. 12).
4. When Trooper Bowles observed the semi and the black Chevy both pass the UDOT crew without changing lanes, he decided to stop the black Chevy with out-of-state license plates. Trooper Bowles’ patrol car was equipped with video/audio recording devices, and a copy of the dash-cam video was admitted as evidence at the time of the Suppression Hearing, September 22, 2009. (Record at 106, p. 18-19; Record at 107, pp. 30-31).
5. Trooper Bowles testified at both the Preliminary Hearing and the Suppression Hearing that the only reason he stopped the black Chevy was for failing to change lanes into the unoccupied left lane, as the vehicle approached and passed the UDOT crew. (Record at 106, p. 5; Record at 107, p. 11).

6. Bowles testified that he “felt it was dangerous to the safety of the UDOT workers for the black Chevrolet not to move over as it passed.” (Record at 67; Record at 106, p. 5; Record at 107, p. 15).
7. The driver of the Chevy, Diamond Flynn, produced a Michigan ID card, but admitted she had no current driver’s license; the passenger, Defendant Ramon Juma, produced his Kansas driver’s license and his vehicle contract rental agreement. (Record at 68; Record at 106, pp. 6-7; Record at 107, p. 18).
8. Trooper Bowles required the driver, Flynn, to sit with him in his patrol cruiser, while he ran standard background checks on both Flynn and Juma. During the course of the next 18 minutes, Trooper Bowles received information verifying that neither Flynn nor Juma have any outstanding warrants, that their identification and license information is all correct, and that the rental vehicle information is all correct. He also received dispatch information that Juma had prior arrests in other states in the past several years for DUI and for drug possession; however, Juma had only been convicted of a DUI and all other charges had been dismissed prior to this Utah investigation. (Record at 106, p. 22; Record at 107, pp. 53-54).

9. Trooper Bowles then gave Flynn a written warning notice for driving without a license, gave her back her ID card, and she began exiting the patrol car to leave; at that point, Trooper Bowles asked her if he could ask more questions, and then he asked to search the vehicle. (Record at 68; Record at 106, pp. 26-29; Record at 107, pp. 56-57).
10. Flynn refused this request and advised that Juma was the car's actual renter. Bowles then asked Juma if he could search, and Juma also declined. (Record at 68; Record at 106, pp. 28-29; Record at 107, p. 57).
11. At this point in time, Bowles decided to deploy his canine, which had been with him in the patrol car the entire time. Both Flynn and Juma were outside the vehicle, along side the shoulder of the freeway, and could not hide, destroy, or otherwise interfere with any of the potential evidence in the car. (Record at 106, pp. 9-10; Record at 107, p. 57).
12. Based on the dog's actions while sniffing the car, Trooper Bowles declared that the dog had alerted and he immediately began searching the interior of the black Chevy, where he subsequently discovered about 33 pounds of marijuana inside one or more

closed containers. When Juma was arrested and transported to jail, a tiny amount of cocaine was discovered in his pocket. (Record at 106, p. 10-11).

13. Juma was charged by Information with Count I, Possession of Controlled Substance with Intent to Distribute (marijuana) and Count II, Possession of Controlled Substance (cocaine), both Third Degree Felonies. (Record at 3).
14. Defendant filed a Motion and Memorandum to Suppress Evidence on August 11, 2009 (Record at 22-36), and a Supplemental Memorandum on September 22, 2009 (Record at 37-43). The Court held an Evidentiary Hearing in the matter on September 22, 2009 (Record at 106), the State filed its Memorandum in Opposition to the Motion to Suppress on November 17, 2009 (Record at 47-62), and the District Court issued its Memorandum Decision denying Defendant's Motion to Suppress, on March 4, 2010 (Record at 65-75).
15. On June 15, 2010, Defendant Juma entered into a Conditional guilty plea for Count I, reserving the right to appeal, and upon the State's motion, Count II was dismissed. (Record at 85-86).

16. Juma timely filed his Notice of Appeal at the District Court in Richfield on June 15, 2010 (Record at 89-90); The District Court granted Juma's Motion for Stay of Sentence Pending Appeal, and Juma remains free on an appeal bond and other restrictions imposed by the District Court (Record at 91-92).

### **SUMMARY OF ARGUMENT**

The Trial Court erred as a matter of law, in not granting the defendant's motion to suppress the evidence in this case, where under the totality of the circumstances and facts, the law requires exclusion of evidence where,

- I. the police lacked reasonable articulable suspicion to stop the defendant's car and detain him and his driver;
- II. the duration of the stop was excessive, and beyond the scope of the original stop;
- III. any reasonable articulable suspicion had dissipated; and where
- IV. the police used a dog sniff alert to claim probable cause to search the car, then searched the car without obtaining a search warrant, under conditions that did not amount to exigent circumstances.

## **ARGUMENT**

**THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT DENIED MR. JUMA'S MOTION TO SUPPRESS EVIDENCE ON GROUNDS OF THE LACK OF REASONABLE SUSPICION TO STOP AND DETAIN DEFENDANT; ON GROUNDS OF EXCESSIVE DETENTION OF THE DEFENDANT; ON GROUNDS OF THE DISSAPATION OF ANY REASONABLE SUSPICION; ON GROUNDS OF VIOLATING JUMA'S DUE PROCESS AND OTHER CONSTITUTIONAL RIGHTS AGAINST UNREASONABLE SEARCH AND SEIZURE; ON GROUNDS OF LACK OF PROBABLE CAUSE WITHOUT EXIGENT CIRCUMSTANCES; ON GROUNDS OF UNLAWFUL SEARCH AND SEIZURE WITHOUT A WARRANT.**

### **POINT I.**

**THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT RULED THAT TROOPER BOWLES HAD REASONABLE SUSPICION TO STOP AND DETAIN THE VEHICLE**

**A. Marshaling of Facts:**

In its Memorandum Decision denying Defendant's Motion to Suppress Evidence, the Trial court found that Trooper Bowles "stopped the vehicle in which Mr. Juma was a passenger, because the driver failed to move over for an emergency vehicle." Another finding was that "Trooper Bowles felt it was dangerous to the safety of the UDOT workers for the black Chevrolet not to move over as it passed." Further, in its analysis, the Trial Court concluded that Utah Code Ann. §41-6a-

904 did not define the UDOT vehicles as “authorized emergency vehicles” and that “the Court finds Trooper Bowles made a good faith mistake” in that he erroneously believed that the law required drivers to move over to the adjacent, unoccupied travel lane when passing emergency vehicles, without distinguishing the differences further described in §41-6a-904(3), that the UDOT vehicles were not emergency vehicles, and that the legal requirement for drivers passing such vehicles does not include making a lane change where one is safely available.

B. The Trial Court Erred as a Matter of Law in Ruling that Trooper Bowles had Reasonable Articulate Suspicion to Stop and Detain the Vehicle Under Circumstances Where Bowles Mistakenly Believed that Utah Code Ann. §41-6a-904 Requires Vehicles to Move to an Adjacent, Unoccupied Lane of Travel While Passing UDOT Maintenance Vehicles Displaying Flashing Amber (Yellow) Lights.

In gauging the legality of the stop of a motor vehicle, the officer’s “actual” motivation is not relevant; what counts is whether the driver, from a purely objective point of view, was violating a motor vehicle law, or behaving in such a manner as to give rise to reasonable suspicion of other criminal activity. *Wren v. United States*, 517 U.S. 806 (1996); *United States v. Harris*, 526 F.3d 1334 (11<sup>th</sup> Cir. 2008); *United States v. Nunez*, 455 F.3d 1223, 1226 (11<sup>th</sup> Cir. 2006). The notion of a “pretextual” stop is a *non sequitur*. *United States v. Botero-Ospina*, 71 F.3d 783, 787 (10<sup>th</sup> Cir. 1995)



(*en banc*). See also, Utah Code Ann. § 77-7-15. Either there was a motor vehicle offense, or there was not. What motivated the officer is not relevant.

The trial court below drew its analysis from *State v. Applegate*, 194 P.3d 925 (Utah 2008) and *State v. Friesen*, 988 P.2d 7 (Ut App 1999), ruling that “all that matters is that [the officer is] able to point to specific and articulable facts regarding [a suspect’s] conduct which, taken together with rational inferences, created a reasonable suspicion of a violation of traffic laws.” (quoting *Applegate, supra*, at 931). The trial court determined that although Trooper Bowles “obviously made a mistake about the specific traffic law involved, he still had a reasonable articulable suspicion Defendants had committed a traffic violation.”

Since there was no evidence the trooper had stopped the car for a contrived or improper purpose, the trial court concludes that his mistaken understanding of what is and is not a violation of the traffic code doesn’t matter. The trial court concluded that because Trooper Bowles believed that this failure to move over, despite no legal reason to do so, constituted a potential safety hazard to the UDOT workers, this subjective belief gave him reasonable suspicion to stop, detain and seize the vehicle and its occupants.

The trial court’s own findings of fact and analysis that Trooper Bowles mistakenly believed that the UDOT vehicles were emergency

vehicles under the statute, and that drivers are required to move over to the adjacent unoccupied lane, confirm that Trooper Bowles' mistake was one of law, not fact.

A mistake of law is never objectively reasonable. *See, United States v. DeGasso*, 69 F.3d 1139 (10<sup>th</sup> Cir. 2004); *State v. Baird*, 763 P.2d 1214 (Utah App. 1999); *State v. Friesen, supra*; *United States v. Herrera*, 444 F.3d 1238 (10<sup>th</sup> Cir. 2006); *United States v. Valadez-Valadez*, 525 F.3d (10<sup>th</sup> Cir. 2008).

But by the trial court's analysis, the police can make an observation of someone, erroneously believe that what they are observing is a violation, and make a Level II stop when even a cursory reading of the statute allegedly violated would show that the behavior observed is not in violation of the law. This is a misreading of the rulings in *Applegate* and *Friesen, supra*.

In *Applegate* the Utah Supreme Court found that the arresting officer was mistaken in his understanding of some aspects of the traffic code, but was correct on one, namely, that "[h]e relied on his belief that residents of Utah who purchase vehicles must register those vehicles in Utah . . . within 60 days of establishing residence here." (Citation omitted). The arresting officer was mistaken on the application of other sections of the law, but was spot-on in relying upon one part of the law supported by his factual

observations. This distinguishes *Applegate* from the instant case, where Trooper Bowles was plainly wrong about the emergency vehicle section of the law, and no other violation of law was observed that would redeem the stop.

In *Friesen, supra*, the Utah Court of Appeals ruled that stopping a vehicle for lacking a front license plate, where the police knew that not all states require a front plate, and where the officer had no actual knowledge of whether Wyoming required a front plate, and was unclear about the front plate requirement, lacked reasonable, articulable suspicion of any criminal activity or traffic or equipment violation of the law. The court stated, “if the conduct of the suspected person is clearly known and the officer’s uncertainty – his suspicion – regards the prohibitions of the law, the officer has no basis upon which to make or defend the stop.” 998 P.2d at 14.

The Courts have narrowly limited situations where an officer’s good faith mistake of law carves out an exception to the exclusionary rule. The Utah Supreme Court describes these limited situations in *State v. Baker*, 2010 UT 18 (2010), stating, “[A] good-faith exception to the exclusionary rule exists when an officer acts in reasonable reliance on a warrant, *United States v. Leon*, 468 U.S. 897 at 920 (1984), in reasonable reliance on a statute later declared unconstitutional, *Illinois v. Krull*, 480 U.S. at 349

(1984), or in “objectively reasonable reliance on a subsequently recalled warrant.” *Herring v. United States*, 129 S. Ct. at 703.” *Baker* at ¶35.

However, the Fourth Amendment analysis in *Baker* stops short of finding that the same exception exists under the Utah Constitution (*Baker*, fn 2). “[O]ur state’s Declaration of Rights might change the result and impose different demands on police officers and others who in a very real sense are the everyday guardians of constitutional guarantees against unreasonable searches and seizures.” *Id.* The applicable language is found in Article I, Section 14 of the Utah Constitution:

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched, and the person or thing to be seized.

This Defendant asserts his rights against unreasonable search and seizure under both the provisions of the Fourth Amendment, and the Utah Constitution. The question of whether reasonable suspicion exists should be based upon the facts known to the police officer at the time of the arrest. Reasonable, articulable suspicion must be supported by what the law actually is, not what the officer subjectively thought the law was. *Applegate*, at ¶14.

## **POINT II.**

### **THE TRIAL COURT ERRED BY NOT SUPPRESSING ALL EVIDENCE SEIZED WHERE TROOPER BOWLES DETAINED THE DEFENDANT MUCH LONGER THAN NECESSARY TO EFFECT THE PURPOSE OF THE STOP.**

#### **A. Marshaling of Facts.**

The trial court's findings of fact that support its decision to deny the Defendant's Motion to Suppress Evidence include the observations made by Trooper Bowles after stopping and detaining Defendant. These include details of a large amount of travel luggage for two people, unusual nervousness of the occupants, the fact of the vehicle having been rented in Nebraska while the driver was from Michigan and Juma was from Kansas, the discrepancies between the two occupants' versions of where they had traveled, and the dispatch report that Juma had prior drug-related arrests (but no convictions). Facts supporting suppression include that Trooper Bowles gave Flynn a written warning for driving without a current valid license, and returned her paperwork, and then initiated new questioning as she began to leave his patrol car, and that Bowles sought consent to search the vehicle and was rebuffed before deploying his canine for a drug sniff.

B. The Trial Court Erred in Finding that the Detention of Juma and Flynn was Not Excessive or Beyond the Scope of the Original Stop.

The Utah Courts in both *Baker* and *Applegate*, *supra*, applied a two-step test to determine whether a traffic stop is reasonable under the Fourth Amendment. *Applegate* at ¶ 9. “The first step is to determine whether ‘the police officer’s action [was] justified at its inception’. In the second step, we must determine whether the detention following the stop was ‘reasonably related in scope to the circumstances that justified the interference in the first place.’” *Id.* (as cited in *Baker*, ¶ 12, quoting *State v. Lopez*, 873 P.2d at 1131-32). Juma has already asserted that the stop was not justified.

Police conduct that constitutes an illegal detention beyond the scope of the purpose of an ordinary traffic stop includes when police ask questions about whether a vehicle’s occupants possess drugs. “Subsequent or concurrent detentions for questioning [about drugs] are justified only when the officer has “reasonable suspicion” of illegal transactions in drugs or of any other serious crime.” *United States v. Jones*, 44 F.3d 860, 872 (10<sup>th</sup> Cir. 1995) (quoting *Florida v. Royer*, 460 U.S. 491, 498-99).

In this case, Trooper Bowles detained Juma and Flynn for about 18 minutes while he simultaneously requested information and awaited responses from his dispatch, and interrogated Flynn in the patrol car. The amount of time that it took to obtain verification of identities, license status,

the car's rental status, wants and warrants check and a background check can vary under different conditions, and in this case, it took about 18 minutes.

Because Flynn was driving without a current, valid driver's license, Bowles had reasonable suspicion of that violation, and any increase in the length of the detention to obtain that basic background check is not the issue.

However, once Bowles gave Flynn a written warning citation and the rest of her paperwork, and she started to leave his vehicle, Bowles had concluded the purpose for the stop, and should have allowed them to leave. *State v. Hansen*, 63 P.3d 650 (Utah 2002).

Further, during that wait, Bowles chose to not deploy his canine to sniff the subject vehicle. Bowles had concluded the stop and released the driver before initiating a new line of questioning and requesting permission to search the vehicle. Only after letting Flynn go with a warning and being rebuffed in his request to search the vehicle, did Bowles then order Flynn and Juma to stand aside while he deployed his dog to sniff the exterior of their vehicle. In *People v. Brandon*, 140 P. 3d 15, 19 (Colo. Ct. App. 2005) the suppression of evidence was upheld for a dog search that occurred after the purpose of the stop had concluded even though the dog was in the patrol vehicle throughout the lawful duration of the stop.

Under similar circumstances in *State v. Baker*, 2010 UT 18 at ¶ 14, the Utah Supreme Court held that “the purpose of the stop concluded when the officers finished processing the arrest [of the driver]. “We then hold that the drug dog sniff that occurred after the purposes of the stop had been completed violated Mr. Baker’s Fourth Amendment rights.” *Id.*

The police in *Baker* detained the passengers, including Baker, after they had completed the arrest of the driver of their car, for the purpose of waiting for a K-9 unit with a drug sniffing dog to arrive at the scene. After arresting the driver for driving on a suspended license, the officers had no further need to control the scene, so the Court assessed whether additional detention of the passengers was lawful, since “even a small amount of intrusion beyond the legitimate scope of an initially lawful search is unlawful under the Fourth Amendment.” *Id.* at ¶ 28 (quoting *State v. Schlosser*, 774 P. 2d at 1135 (Utah 1989)).

Under the Fourth Amendment, it is well-settled that a dog sniff is not a search, *United States v. Place*, 462 U.S. 696, 707 (1983), and that a drug-trained dog may walk the perimeter of a lawfully detained vehicle even if police have no reasonable suspicion that the vehicle occupants are engaged in drug-related activity **so long as the dog sniff search does not extend the duration of the stop.** *Illinois v. Caballes*, 543 U.S. 405, 408 (2005).



Prolonging a seizure can become unlawful “if it is prolonged beyond the time reasonably required to complete that mission.” *Id.* at 407.

An officer cannot prolong a driver’s detention after concluding the purpose of the original stop without reasonable belief that the driver was involved in other illegal activity. *State v. Hansen*, 2002 UT 25, ¶ 32. In *Hansen*, the driver was detained for an illegal lane change and lack of car insurance. The officer returned his license and registration and gave him a verbal warning to get insurance, then the officer inquired if there were drugs and alcohol in the car and asked for consent to search, which was given. The Court held that the driver’s consent was “the fruit of an illegal detention because the officer continued to question him after the purpose of the stop had concluded.” *Id.* At ¶ 32.

Detaining the occupants of a car beyond the lawful purpose of the stop to conduct a dog sniff does not differ “in any meaningful way from detaining occupants in order to request consent to search their car. Both a dog sniff and a consent search are legal under the Fourth Amendment only when they are performed during the course of a lawful stop.” *State v. Baker*, 2010 UT 18 at ¶ 33.

Trooper Bowles exceeded the scope of detention when he requested permission to search the car. *See, State v. Bissegger*, 76 P.3d 178 (Utah

App. 2003) (citing *State v. Robinson*, 797 P.2d 432, 437 (Utah App. 1990) (finding a Fourth Amendment violation where police did not have the “reasonable suspicion of criminal activity necessary to justify their continued detention and questioning of the [defendants] once . . . the purpose for the initial stop had been accomplished.”).

### **POINT III.**

**THE TRIAL COURT ERRED IN FINDING THAT THERE WAS NO DISSIPATION OF REASONABLE ARTICULABLE SUSPICION WHICH WOULD REQUIRE THE TERMINATION OF FURTHER DETENTION AND THEREBY DENYING DEFENDANT’S MOTION TO SUPPRESS**

A. Marshaling of Facts.

The trial court does not directly address the notion of “Dissipation of Reasonable Suspicion” in its Decision; however, the State does argue that no such doctrine exists, and that the observations of Trooper Bowles created sufficient reasonable articulable suspicion of drug trafficking to justify further detention, dog deployment and the search.

B. The trial court erred in denying the Motion to Suppress under circumstances where any basis in fact for reasonable articulable suspicion of criminal activity had dissipated.

In *State v. Morris*, 2009 UT App. 181, the court held that a traffic stop must terminate and the driver and occupants must be immediately permitted to leave, when the officer's reasonable articulable suspicion dissipates. In *Morris*, the officer stopped a vehicle when he could not see a rear license plate. Upon exiting his patrol car and approaching the vehicle on foot, the officer observed a valid, current temporary paper license mounted in the rear window of the car. Instead of continuing the stop, seeking license, registration, insurance and background information, the officer should have simply turned around and left, as he no longer had any reasonable suspicion to detain this driver.

Police detention is no longer justified after reasonable suspicion dissipates. Once the reason for the traffic stop has been resolved, "any further temporary detention . . . constitutes an illegal seizure." *State v. Hansen*, 63 P. 3d 650 at ¶ 31.

When Trooper Bowles gave Flynn a warning citation, returned her ID card and other paperwork and she opened the door of his patrol car and started leave, Bowles detained her and Juma further to inquire about drugs and request a consent search. If Bowles had some new or heightened suspicion regarding luggage, rental car contracts, etc., he would not have released Flynn. Trooper Bowles own actions in concluding the purpose of

the stop would indicate that any reasonable articulable suspicion had dissipated, and there was no further compelling reason to detain Flynn and Juma.

Once the police have issued a traffic citation for a minor violation, the Fourth Amendment prohibits the police from searching the vehicle as though it were incident to an arrest. *Knowles v. Iowa*, 525 U.S. 113 (1998). In *Knowles*, the police stopped the driver for speeding, issued him a written citation, and then proceeded to search the interior of his vehicle, finding drug contraband. In its ruling, the Supreme Court stated:

Once Knowles was stopped for speeding and issued a citation, all the evidence necessary to prosecute that offense had been obtained. No further evidence of excessive speed was going to be found either on the person of the offender or in the passenger compartment of the car. *Id.*

#### **POINT IV.**

#### **THE TRIAL COURT ERRED IN DENYING DEFENDANT'S MOTION TO SUPPRESS EVIDENCE OBTAINED FROM A WARRANTLESS SEARCH WITHOUT SUFFICIENT PROBABLE CAUSE AND WITHOUT EXIGENT CIRCUMSTANCES.**

##### **A. Marshaling of Facts.**

The trial court found nothing wrong with Trooper Bowles further detention of the vehicle's occupants in order to deploy his trained service animal to conduct a drug sniff, and upon receiving an indication from the dog, conducting an immediate

search of the interior of the vehicle and the closed containers within the vehicle, without first obtaining a search warrant.

- B. The Trial Court Erred as a Matter of Law in Denying the Motion to Suppress Evidence Where Trooper Bowles Conducted a Search of the Interior of the Vehicle and the Closed Containers Therein, Absent Exigent Circumstances, Without First Seeking and Obtaining a Search Warrant, Based on Probable Cause, in Violation of Both the Fourth Amendment and Article I Section 14 of the Utah Constitution.

The Fourth Amendment to the United States Constitution, and Article I Section 14 of the Utah Constitution, protect citizens from unreasonable searches and seizures of their persons, houses, papers, and effects by the government. The Fourth Amendment reads:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

“The touchstone of the Fourth Amendment is reasonableness, which is measured in objective terms by examining the totality of the circumstances.”

*Ohio v. Robinette*, 519 U.S. 33, 39 (1996) (quoting *Florida v. Jimeno*, 500 U.S. 248, 250 (1991)). Reasonableness under the Fourth Amendment

“depends ‘on a balance between the public interest and the individual’s right to personal security free from arbitrary interference by law officers.’” *State*

*v. Warren*, 2003 UT 36, ¶ 31 78 P. 3d 590 (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975)).

Fourth Amendment analyses should always begin with the basic rule that searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment, subject only to a few specifically established and well-delineated exceptions. *Arizona v. Gant*, 129 S. Ct. 1710, 1716 (2009) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). Among these exceptions would be where a suspect might gain possession of a weapon or destroy evidence. *Chimel v. California*, 395 U.S. 752 at 763.

Utah's Constitution provides greater protection from unreasonable search and seizure than does the Fourth Amendment of the United States Constitution. *See, State v. Larocco*, 794 P.2d 460, 465-8 (Utah 1990); *State v. Gardner*, 814 P. 2d 568, 571 (Utah 1991).

With all the occupants out of the car, off the side of the road, unable to hide or destroy anything, during daylight hours on a weekday, there were no exigent circumstances that would demand an immediate search of the vehicle without first obtaining a warrant from a magistrate, based on an affidavit of the officer articulating the details giving rise to probable cause. In these modern times, electronic means such as telephone and email are

routinely used to obtain warrants, and it's not like Flynn and Juma were going to run off on foot along the I-70 freeway near Salina!

Bowles lacked any exigent circumstances to justify a warrantless search, such as preventing the imminent destruction of evidence. *State v. Duran*, 2007 UT 23 ¶ 7, 156 P.3d 795. It was not the middle of the night, it wasn't even raining, nor were there other reasons that would have made it difficult to obtain a warrant without much delay. *See, State v. Rodriguez*, 2007 UT 15, ¶¶43-44, 156 P. 3d 771.

### **CONCLUSION AND REQUEST FOR RELIEF**

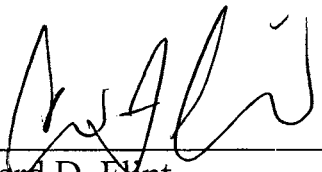
The trial court erred as a matter of law when it denied Defendant's Motion to Suppress Evidence. The mistake of law by Trooper Bowles in stopping and detaining Defendant is insurmountable by any degree of "good faith" he may have had in his erroneous understanding of the traffic code, namely, the definition of "emergency vehicles" and the duties of motorists under Utah Code Ann. § 41-6a-904. Since the stop was not valid, no amount of subsequently observed facts matter, and the evidence should be excluded.

The new suspicions raised by Bowles observations regarding luggage, car rental and residency details, and so forth, are insufficient to justify detaining Juma further. Once Bowles gave Flynn, the driver, a warning citation and her other paperwork, the stop was over, and further detention of

Flynn and Juma was unlawful. With the act of completing his investigation and issuing a warning citation, Bowles conceded that his potentially reasonable articulable suspicions of drug trafficking had dissipated, and further detention of the vehicle occupants was unjustified. By further detaining the occupants to conduct a drug sniff by his dog, Bowles violated Juma's rights under both the Fourth Amendment and the Utah Constitution. In conducting a warrantless search of the vehicle absent exigent circumstances, Bowles infringed upon Juma's rights under both the Fourth Amendment and the Utah Constitution, Article I, Section 14.

WHEREFORE, Defendant/Appellant Ramon Juma requests this Court to Overrule the Decision of the trial court below denying his Motion to Suppress Evidence.

SUBMITTED this 25<sup>th</sup> day of October, 2010.



---

Edward D. Flint  
Attorney for Ramon Juma



CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 25 day of October, 2010, a true and correct copy of the foregoing Opening Brief of Appellant Ramon Juma was served upon each of the following persons, by first class US Mail, postage prepaid:

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320 S 50 West  
Ephraim, Utah 84627

Ramon Juma  
Defendant  
(by email)

BY:



Edward D. Flint

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Case: 091600075

SIXTH DISTRICT COURT-RICHFIELD

Appellate #: 20100492  
FILED

STATE OF UTAH vs. JUMA, RAMON A. UTAH APPELLATE COURTS

STATE OF UTAH  
COUNTY OF SEVIER

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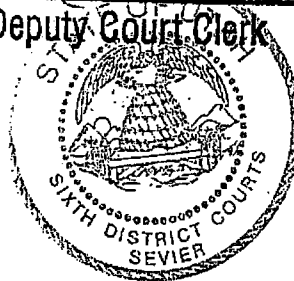
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certify that this document or record  
is a full, true, and correct copy of  
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Date: July 8, 2010

By: *Carol Shank*

Deputy Court Clerk



SIXTH DISTRICT COURT

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CLERK

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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

IN AND FOR SEVIER COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

VS.

INFORMATION

RAMON A. JUMA,  
DOB: 03/08/72

Defendant.

Case No.  
Judge

091600075  
Lee

The undersigned, Dale P. Eyre, Sevier County Attorney, states on information and belief that the Defendant committed the crimes of:

COUNT 1: POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DISTRIBUTE, contrary to Section 58-37-8(1)(a)(iii), Utah Code Annotated, in that said Defendant did, on or about the 31<sup>st</sup> day of March, 2009, at the County of Sevier, State of Utah, knowingly and intentionally possess with intent to distribute a controlled or counterfeit substance, to-wit: marijuana, the same constituting a Felony of the Third Degree.

COUNT 2: POSSESSION OF A CONTROLLED SUBSTANCE, contrary to Section 58-37-8(2)(a)(i), Utah Code Annotated, in that said Defendant



000003


Page 2—Information

State of Uah vs. Ramon A. Juma

did, on or about March 31, 2009, at the County of Sevier, State of Utah, knowingly and intentionally possess or use a controlled substance, to-wit: cocaine, all of which constitutes a Felony of the Third Degree.

This information is based on evidence obtained from the following witnesses: Nick Bowles

Authorized for presentment and filing  
on the 2<sup>nd</sup> day of April, 2009.



---

DALE P. EYRE  
Sevier County Attorney

SIXTH DISTRICT COURT

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SIXTH JUDICIAL DISTRICT COURT, STATE OF UTAH  
SEVIER COUNTY, RICHFIELD DEPARTMENT

STATE OF UTAH,	:	DEFENDANT'S MOTION TO
	:	SUPPRESS EVIDENCE
Plaintiff,	:	
	:	
vs.	:	
	:	
RAMON A. JUMA,	:	Case No.: 091600075
	:	
Defendant.	:	Judge Wallace A. Lee
	:	

COMES NOW the Defendant, Ramon A. Juma, through counsel of record, Edward D. Flint, and Respectfully MOVES this Court to Order the Suppression of certain evidence and testimony in this case, for reason that the State has violated the Defendant's Constitutional rights in obtaining same. This Motion is further supported by the accompanying Memorandum.

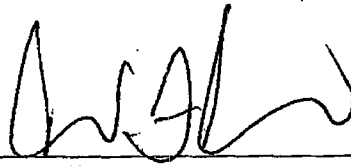
DATED this 10 day of August, 2009.

  
Edward D. Flint  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I certify that on the <sup>11<sup>th</sup></sup>~~10<sup>th</sup>~~ day of August, 2009, I personally mailed/hand-delivered/faxed a true and correct copy of the foregoing Defendant's Motion to Suppress Evidence; and Memorandum in Support of Defendant's Motion to Suppress Evidence to the following:

Sevier County Attorney  
835 East 300 North, Suite 100  
Richfield, UT 84701



Edward D. Flint

SIXTH DISTRICT COURT  
2009 AUG 11 PM 3:14

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SIXTH JUDICIAL DISTRICT COURT, STATE OF UTAH  
SEVIER COUNTY, RICHFIELD DEPARTMENT

STATE OF UTAH,	:	MEMORANDUM IN SUPPORT
	:	OF DEFENDANT'S MOTION TO
Plaintiff,	:	SUPPRESS EVIDENCE
	:	
vs.	:	
	:	
RAMON A. JUMA,	:	Case No.: 091600075
	:	
Defendant.	:	Judge Wallace A. Lee

COMES NOW the Defendant, Ramon A. Juma, through counsel of record, Edward D. Flint, and Respectfully Submits the following Memorandum in Support of Defendant's Motion to Suppress Evidence.

**INTRODUCTION AND DISCLAIMER**

Defendant Juma's counsel, Edward D. Flint, submits this Motion and Memorandum at the conclusion of the Preliminary Hearing in this matter, and reserves the opportunity to revise or

Memorandum in Support of Defendant's Motion to Suppress Evidence



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supplement the contents hereof, should the sworn testimony at the Preliminary Hearing differ from the representations herein.

### RELEVANT FACTS

1. On March 31, 2009, Defendant Ramon A. Juma (Juma) was riding in the front passenger seat of a black, four-door Chevrolet sedan that he had rented several days earlier.
2. The vehicle was driven by Juma's traveling companion, Diamond Flynn.
3. Trooper Nick Bowles of the Utah Highway Patrol reports that he was in his patrol vehicle, stationary in the median of Interstate 70 near milepost 57 and observed the black Chevy in the eastbound, outside lane (right lane), as it passed by several Utah Dept. of Transportation vehicles on the eastbound shoulder, with their emergency lights flashing.
4. Trooper Bowles states that the Chevy did not change lanes to the unoccupied left lane as it neared and passed the UDOT vehicles, and that is why he proceeded to stop the vehicle.
5. Upon detaining Flynn and Juma, Trooper Bowles discovered that Flynn did not possess a valid driver's license.
6. Trooper Bowles ordered both occupants out of the vehicle, took the picture ID's of both, and placed Juma along the passenger side of the car, and ordered him to remain there while he spoke with Flynn in the patrol car.

7. Trooper Bowles immediately advised Flynn that he was going to issue her a warning citation for the driving violation.
8. Trooper Bowles interrogated Flynn in the patrol car and radioed to his dispatch for information on both Flynn and Juma, and briefly spoke with Juma outside of the patrol vehicle, for approximately 18 minutes before finally issuing a "warning" citation to Flynn and telling her she could leave.
9. Flynn exited the patrol vehicle and started back towards the rented Chevy. Trooper Bowles then asked Flynn if she would wait a moment, "if we could talk some more." Bowles then asked her if there were any illegal narcotics in the vehicle, Flynn responded that there were none; Bowles then asked if she would consent to a search of the vehicle. Flynn declined and stated that it was Juma's vehicle.
10. Trooper Bowles then asked Juma if there were any illegal narcotics in the vehicle, and Juma replied that there were none; Bowles asked Juma if he could search the vehicle, and Juma refused to grant any such permission.
11. Trooper Bowles then deployed a canine which ultimately resulted in Bowles searching the defendant's vehicle, where marijuana was discovered, and both Juma and Flynn were arrested. Upon a search of Juma, a small amount of cocaine was found in his clothing.
12. Juma is now before this Court charged by Information with a Third Degree Felony for the Possession of cocaine, a Third Degree Felony for Possession of marijuana with intent to distribute.

**ARGUMENT I.**  
**TROOPER BOWLES LACKED REASONABLE SUSPICION**  
**TO STOP THE DEFENDANT'S VEHICLE**

The statement of Trooper Bowles that the sole reason for stopping the Chevrolet driven by Flynn, where Juma was a passenger, was and is, that the vehicle failed to move over and change lanes while approaching and passing the UDOT crew on the right shoulder of eastbound I-70. He specifically states that the UDOT vehicles had their yellow (amber) lights flashing, and that the left travel lane was unoccupied, and that Flynn could have moved into the left lane before passing the UDOT vehicles.

Defendant submits that there is no legal requirement for the driver of a vehicle to move over, move to the left or change lanes while approaching or passing a highway maintenance vehicle with its yellow (amber) lights flashing. A driver is only required to slow down and provide as much space as practical to the stationary highway maintenance vehicle. The law in Utah is:

**41-6a-904. Approaching emergency vehicle -- Necessary signals --**  
**Stationary emergency vehicle -- Duties of respective operators.**

(1) Except when otherwise directed by a peace officer, the operator of a vehicle, upon the immediate approach of an authorized emergency vehicle using audible or visual signals under Section 41-6a-212 or 41-6a-1625, shall:

(a) yield the right-of-way and immediately move to a position parallel to, and as close as possible to, the right-hand edge or curb of the highway, clear of any intersection; and

(b) then stop and remain stopped until the authorized emergency vehicle has passed.

(2) The operator of a vehicle, upon approaching a stationary authorized emergency vehicle that is displaying alternately flashing red, red and white, or red and blue lights, shall:

(a) reduce the speed of the vehicle;

(b) provide as much space as practical to the stationary authorized emergency vehicle; and

(c) if traveling in a lane adjacent to the stationary authorized emergency vehicle and if practical, with due regard to safety and traffic conditions, make a lane change into a lane not adjacent to the authorized emergency vehicle.

(3) The operator of a vehicle, upon approaching a stationary tow truck or highway maintenance vehicle that is displaying flashing amber lights, shall:

(a) reduce the speed of the vehicle; and

(b) provide as much space as practical to the stationary tow truck or highway maintenance vehicle.

(4) This section does not relieve the operator of an authorized emergency vehicle, tow truck, or highway maintenance vehicle from the duty to drive with regard for the safety of all persons using the highway.

Trooper Bowles should not have stopped the Chevy sedan driven by Flynn. She would only have been required to move over, move left or change lanes if an official emergency vehicle was stopped, flashing red, red and white or red and blue lights, as required in section (2) of the statute.

The UDOT vehicles with their flashing yellow (amber) lights are governed by section (3) of the statute. The UDOT vehicles were completely off of the highway, on the shoulder, and not impeding traffic. Ms. Flynn did nothing wrong, and Trooper Bowles had no reasonable articulable suspicion of an actual violation of the law that would permit him to stop the Chevy sedan.

Protection from unreasonable search and seizure is guaranteed under the United States Constitution, Amendment Four, and the Utah Constitution, Article I, Section 14, which gives even broader protection. State v. Larocco, 794 P.2d 460, 465-8 (Utah 1990); State v. Gardner, 814 P.2d 568, 571 (Utah 1991).

Officer Baldwin stopped and detained Defendant without any reasonably articulated suspicion that she had committed any violation, and thereby detained her unlawfully. State v. Deitman, 739 P2d 616, 618 (Utah 1987); *See, also* Utah Code Ann. §77-7-15 (1990).

Since the stop and detention of defendant was illegal from its inception, any evidence or information obtained subsequent to the stop is inadmissible under the “fruit of the poisonous tree” doctrine, and must be suppressed. Wong Sun v. United States, 371 US 471, 487-88 (1963).

**ARGUMENT II.  
TROOPER BOWLES DETAINED FLYNN AND JUMA  
MUCH LONGER THAN NECESSARY TO EFFECT  
THE PURPOSE OF THE STOP**

Even if the original stop of Flynn and Juma was somehow justified, Trooper Bowles’ stated purpose was first, the traffic violation, secondly, Flynn’s lack of a valid drivers license, and finally, whether Flynn or Juma had any warrants. Certainly, during the course of the detention for these purposes, a well-trained and experienced law enforcement officer will look for other indicia of criminal activity.

However, the facts herein are that the very first thing Trooper Bowles told Flynn was that he was going to only issue a warning citation to her for driving without a license, and require that Juma drive the car away, after doing a background check. Both Flynn and Juma passed the check; neither had any wants or warrants.

Trooper Bowles did discover, however, during the background check, that Juma had some prior arrests for DUI and for narcotics possession (it must be noted that all of Juma’s prior arrests for drug possession resulted in dismissals, and his only conviction is for a DUI). Trooper

Bowles detained Flynn and Juma some 18 minutes, found no reason to arrest or detain either any further, and issued Flynn a warning citation, and she started to leave.

Only then did Bowles detain them again, and begin a new interrogation, and set forth a new demand to search the vehicle.

The Fourth Amendment of the United States Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. The United States Supreme Court has held that "stopping an automobile and detaining its occupants constitutes a seizure" within the meaning of the Fourth Amendment, "even though the purpose of the stop is limited and the resulting detention quite brief." Delaware v. Prouse, 440 U.S. 648, 653 (1979). Thus, "although a person has a lesser expectation of privacy in a car than in his or her home, one does not lose the protection of the Fourth Amendment while in an automobile." State v. Schlosser, 774 P.2d 1132, 1135 (Utah 1989).

To determine whether a Level Two seizure is constitutionally reasonable, courts make a dual inquiry: (1) Was the police officer's action "justified at its inception"? and (2) Was the resulting detention "reasonably related in scope to the circumstances that justified the interference in the first place"? State v. Hansen, 63 P.3d 650, 660 (Utah 2002).

Juma claims the stop was unjustified from the outset.

The second question is whether the stop continued to be reasonably related in scope to the traffic violation which justified it in the first place. State v. Lopez, 873 P.2d 1127 (Utah 1994).

Regarding the second question, during a traffic stop an officer "may request a driver's license and vehicle registration, conduct a computer check, and issue a citation." State v. Hansen, 63 P.3d at 660. However, the traffic stop "must be temporary and last **no longer than is necessary** to effectuate the purpose of the stop." Florida v. Royer, 460 U.S. 491, 500, 75 L.Ed.2d 229, 103 S.Ct. 1319 (1983) (emphasis added).

In other words:

Once the purpose of the initial stop is concluded, however, the person must be allowed to depart. "**Any further temporary detention for investigative questioning after fulfilling the purpose for the initial traffic stop**" constitutes an illegal seizure, unless an officer has probable cause or a reasonable suspicion of a further illegality. State v. Hansen, 63 P.3d at 660. (emphasis added).

Thus, the issue is not how long the additional detention lasted or how intrusive it was.

The Utah Supreme Court is clear: "**Any further temporary detention**" for investigative questioning after fulfilling the original purpose for the initial traffic stop **constitutes an illegal seizure**, unless an officer has probable cause to arrest or a reasonable suspicion of a further illegality. Id.

In determining whether a person remains seized within the meaning for Fourth Amendment, after the original purpose of a traffic stop has been fulfilled, Utah courts have followed the **totality of the circumstances** standard: A person is seized under the Fourth Amendment when, considering the totality of the circumstances, the police conduct would have communicated to a reasonable person that the person was not free to decline the officer's requests or otherwise terminate the encounter and go about his or her business. State v. Mogen, 52 P.3d 462, 466 (Utah App. 2002), citing United States v. Mendenhall, 446 U.S. 544, 554, 100 S.Ct. 1870, 1877, 64 L.Ed.2d 497 (1980).

One example of police conduct that constitutes illegal detention beyond the scope of the purpose of an ordinary traffic stop is when police ask questions about whether a vehicle's occupants possess drugs. The "correct rule" regarding this type of questioning is that: "in strict accordance with Terry and its progeny, questioning during a traffic stop must be limited to the purpose of the traffic stop and thus may not be extended to the subject of drugs." Wayne R. LaFave, *The "Routine Traffic Stop" From Start to Finish: Too Much "Routine," Not Enough Fourth Amendment*, 102 Mich. L. Rev. 1843, 1887 (August 2004), citing, *inter alia*, United States v. Jones, 44 F.3d 860, 872 (10<sup>th</sup> Cir. 1995) (stating that "[s]ubsequent or concurrent detentions for questioning [about drugs] are justified only when the officer has 'reasonable suspicion' 'of illegal transactions in drugs or of any other serious crime.'"), quoting Florida v. Royer, 460 U.S. 491, 498-99, 75 L.Ed.2d 229, 103 S.Ct. 1319 (1983).

Similarly, requests by police for consent to search a vehicle after questioning about drugs is beyond the permissible scope of an ordinary traffic stop and searches conducted pursuant to such consent are illegal. LaFave, *supra* at 1893, citing State v.



Fort, 660 N.W.2d 415, 419 (Minn. 2003) (suppressing evidence obtained pursuant to a consent search because the officer's "consent inquiry [about narcotics and weapons]. . . went beyond the scope of the traffic stop and was unsupported by any reasonable articulable suspicion.").

Utah law follows the rule described above. For example, in State v. Hansen, 63 P.3d 650 (Utah 2002), the court held that the officer exceeded the permissible scope of the traffic stop by asking for permission to search the vehicle for drugs without having reasonable suspicion to do so. Id. at 666-67. Similarly, in State v. Bissegger, 76 P.3d 178 (Utah App. 2003), the court held that an officer "exceeded the scope of detention when he requested permission to search the car." Id. at 183-84, citing State v. Robinson, 797 P.2d 432, 437 (Utah App. 1990) (finding Fourth Amendment violation where police did not have "the reasonable suspicion of criminal activity necessary to justify their continued detention and questioning of the [defendants] once...the purpose for the initial stop had been accomplished.").

Particularly instructive to the case at bar is State v. Mogen, 52 P.3d 462 (Utah App. 2002). In Mogen, police conducted an investigatory stop of defendant's truck for speeding, took the defendant's driver's license, and conducted a routine license and warrants check, then returned the defendant's license and issued him a verbal warning for speeding. Id. at 464. Then, the officer took a few steps toward his patrol car, turned around asked if he could search the truck for drugs. Id.

On appeal, the State admitted that the officer did not have reasonable suspicion to justify a search, but argued that "once the officer told Defendant he was free to go and stepped back from the vehicle towards his police car, the seizure ended. Therefore, when

the officer turned around and again approached Defendant, the encounter had de-escalated to a level-one stop and reasonable suspicion to search was not necessary.” Id. at 466.

The court of appeals, however, rejected the State’s position and upheld the trial court’s ruling that the “[d]efendant remained seized within the meaning of the Fourth Amendment when the officer asked to search his truck” and concluded that therefore the evidence discovered during the subsequent consensual search was properly suppressed. Id. at 467.

Similarly, in the case at bar, Trooper Bowles’ questioning of the driver about drugs was beyond the scope of any permissible stop. Bowles extended the encounter by asking for permission to search the vehicle for drugs. Moreover, Bowles started questioning the occupants for permission to search without any reason for believing there could be drugs in the vehicle. In addition, even when he was told that there were no drugs in the vehicle he continued to investigate and detain the occupants by asking for permission to search the vehicle anyway. Such questioning was outside the scope of the circumstances that justified the initial stop and thus constituted an unreasonable seizure of the vehicle’s occupants.

**ARGUMENT III.**  
**TROOPER BOWLES’ WARRANTLESS SEARCH**  
**VIOLATES DEFENDANTS’ CONSTITUTIONAL RIGHTS**

Warrantless searches “are *per se* unreasonable,” “subject only to a few specifically established and well-delineated exceptions.” Katz v. United States, 389 U. S. 347 . The exception for a search incident to a lawful arrest applies only to “the area from

within which [an arrestee] might gain possession of a weapon or destructible evidence.”

Chimel v. California, 395 U. S. 752, at 763.

The Supreme Court of the United States has clearly ruled that police may search the passenger compartment of a vehicle incident to a recent occupant’s arrest only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest. Arizona v. Gant, \_\_\_\_ U.S. \_\_\_\_, No. 07-542, Opinion published on April 21, 2009.

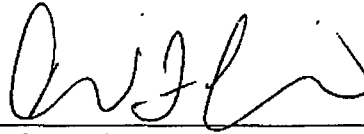
Even if Flynn had been arrested for driving without a license or not yielding to an emergency vehicle, the car cannot be searched. But Trooper Bowles first has a dog sniff the exterior of the car, and when Bowles makes a different hand signal to the dog, and the dog starts barking, Bowles declares that the dog has alerted, and then conducts a full-scale search of the passenger compartment of the vehicle.

### CONCLUSION

The defendants were stopped without any reasonable articulable suspicion of any actual or possible violation of the law. They were detained much longer than necessary to effect the purpose of the stop. Trooper Bowles terminated the Level II detention when he gave Flynn a warning citation and permission to leave; he could not re-engage Flynn and Juma without new articulable facts of criminal activity. Bowles conducted a warrantless search of defendants’ vehicle despite having released them to leave, and without any possible reason of securing his own safety or other legal reason for a warrantless search.

All of the evidence seized from Juma and Flynn should be suppressed as having been obtained through unlawful means, in violation of the defendants' Constitutional rights.

DATED this 10 day of August, 2009.



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Date: 9-22-09  
6th District Court  
Sevier County  
Clerk: [Signature]

SIXTH JUDICIAL DISTRICT COURT, STATE OF UTAH  
SEVIER COUNTY, RICHFIELD DEPARTMENT

STATE OF UTAH,	:	DEFENDANT'S SUPPLEMENTAL
	:	MEMORANDUM REGARDING
Plaintiff,	:	EVIDENCE SUPPRESSION
	:	
vs.	:	
	:	
RAMON A. JUMA,	:	Case No.: 091600075
	:	
Defendant.	:	Judge Wallace A. Lee
	:	

COMES NOW the Defendant, Ramon A. Juma, through counsel of record,  
Edward D. Flint, and Respectfully Submits the following Supplemental Memorandum in  
Support of Defendant's Motion to Suppress Evidence.

**ISSUE NUMBER 1: GOOD FAITH MISTAKE**

Defendant assumes the State will argue that Trooper Bowles' mistake in stopping  
the Defendants' vehicle for failing to change lanes while passing a UDOT maintenance  
vehicle, was a "Good Faith" mistake, thereby negating Defendants' claim that there was  
never any reasonable, articulable suspicion of a violation of law to permit Bowles to  
make the stop in the first place. However, this is an erroneous view of Utah law.

Generally, the state of mind of the police is not relevant in assessing whether

Defendant's Supplemental Memorandum Regarding Evidence



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there has been Fourth or Fifth Amendment violations. Whether a person is “in custody” for *Miranda* purposes, for example, is viewed by the court objectively, based on the circumstances, not the state of mind of the police or the defendant. Whether there is probable cause to arrest is viewed objectively, not the officer’s state of mind.

But when it comes to determining whether the exclusionary rule should apply, the court frequently focuses on the good faith of the police – the officer making the arrest, or the officer providing information that prompts the arrest.

In gauging the legality of the stop of a motor vehicle, basic hornbook law is that the officer’s “actual” motivation is not relevant; what counts is whether the driver, from a purely objective point of view, was violating a motor vehicle law. *Wren v. United States*, 517 U.S. 806 (1996); *United States v. Harris*, 526 F.3d 1334 (11<sup>th</sup> Cir. 2008); *United States v. Nunez*, 455 F.3d 1223, 1226 (11<sup>th</sup> Cir. 2006). Thus, the notion of a “pretextual” arrest is a *non sequitur*. *United States v. Botero-Ospina*, 71 F.3d 783, 787 (10<sup>th</sup> Cir. 1995) (*en banc*). Either there was a motor vehicle offense, or there was not. What motivated the officer is not relevant.

If the state acknowledges that there was not probable cause for the arrest/search, the prosecution may argue that the police acted in good faith, but this means “objective” good faith, not “subjective” good faith. *Illinois v. Krull*, 480 U.S. 340 (1987). What counts is what information was known to the officer and whether, given that information, he acted in good faith in making the arrest or the search.

But a mistake as to the *law* – even if it is in good faith – is not a valid “defense” to suppression. Decisions in Utah appear to hew closer to the line: mistakes of law are never “objectively reasonable” whereas mistakes of fact are often forgiven. *See, e.g.*,

*United States v. DeGasso*, 69 F.3d 1139 (10<sup>th</sup> Cir. 2004); *State v. Baird*, 763 P.2d 1214 (Utah Court of Appeals 1988); *State v. Friesen*, 988 P.2d 7 (Utah Court of Appeals 1999); *United States v. Herrera*, 444 F.3d 1238 (10<sup>th</sup> Cir. 2006); *United States v. Valadez-Valadez*, 525 F.3d 987 (10<sup>th</sup> Cir. 2008).

So when it comes to deciding whether a defendant's Fourth or Fifth Amendment rights have been violated, the basic rule is that police officers' intentions are not what matters. When it comes to the question of the application of the exclusionary rule after it has been decided that the objective facts establish a violation of the defendant's Fourth or Fifth Amendment rights, however, the police officer's state of mind is front and center, assuming he acts reasonably, given the objective facts known to him.

In this case, Trooper Bowles testified at the Preliminary Hearing that the Defendants were stopped for the sole and exclusive reason that the driver (Flynn) failed to move into the unoccupied left lane while passing the UDOT vehicles on the right side shoulder of the freeway, which had their yellow lights flashing. (Transcript, p. 13, line 25 through p. 17, line 4). As previously argued, this is not a violation of law.

## **ISSUE NUMBER 2: WARRANTLESS SEARCH NOT PERMITTED**

Assuming, for the sake of argument, that we reach the issue of whether Trooper Bowles could search Defendants' vehicle based upon his determination that the totality of the circumstances, coupled with his dog alerting and indicating possible presence of illegal drugs, gave Bowles the unfettered authority to conduct a warrantless search of the vehicle. It is not disputed that Bowles lacked any permission or consent to search, as each Defendant specifically declined to consent to any search.

The Utah State Constitution, Article I, Section, 14, states:

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched, and the person or thing to be seized.

There is no reason why Trooper Bowles could not have called into his dispatch to start the process of obtaining a search warrant. There were no exigent circumstances, since both Defendants were outside of the vehicle and could not have hidden or destroyed any potential evidence in the vehicle. The United States Supreme Court recently reiterated that Fourth Amendment analyses should always begin "with the basic rule that searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment--subject only to a few specifically established and well-delineated exceptions." Arizona v. Gant, 129 S. Ct. 1710, 1716 (2009) (quoting Katz v. United States, 389 U.S. 347, 357 (1967)). And Utah law makes clear that any police detention must be justified by reasonable suspicion of a crime; police detention is no longer justified after reasonable suspicion dissipates. See State v. Hansen, 2002 UT 125, ¶ 31, 63 P.3d 650 (stating that once the reason for the traffic stop has been resolved, i.e., reasonable suspicion has dissipated, "[a]ny further temporary detention . . . constitutes an illegal seizure").

### ISSUE NUMBER 3: DISPOILATION OF EVIDENCE

Trooper Bowles admitted, during testimony at the Preliminary Hearing, that his uniform microphone was inoperable, that the batteries were dead, and that is the reason why all conversations outside of his patrol vehicle were not recorded. (Transcript p. 23 line 14, through p. 24, line 12). Part of the Trooper's observations used in determining the "totality of the circumstances" giving rise to his increased articulable suspicions,



justifying further detention and search, were his conversations with Defendants outside of his patrol vehicle.

Utah Highway Patrol Operating Policy 3-3-16 was promulgated in 1996 and revised in 2005 to govern, among other things the appropriate usage of the mobile video recording ("M.V.R") equipment that is standard in Utah Highway Patrol vehicles. The purpose of the procedures is to maximize the benefits of this equipment in the prosecution of various offenses and in the evaluation of troopers' performance. The Operating Policy is explicit in stating that troopers "shall follow the procedures set forth in this policy". Section III-A-2 states, "It is mandatory that M.V.R. equipment operators record both audio and video portions of all police related activities." Section III-A-3 further states that the M.V.R. equipment will continue recording until the incident has concluded. "If the recording is stopped before the incident concludes, the trooper will state on the tape why the equipment is being turned off."

The purpose for these instructions is clear. In a case such as a DUI, or the instant case where the totality of circumstances is most relevant, the interpretation of a defendant's demeanor, appearance and speech patterns are crucial for the finder of fact to make a correct determination, and certainly the content of the conversation, the exact questions asked and the precise answers given. Videotape evidence is particularly useful because it allows a jury, instead of receiving testimony through the filter of a testifying officer or defendant, to "*draw its own conclusions.*" State v. Zinsli, 156 Or. App. 245, 254 (Or. 1998) (emphasis in original). However, in this case, Trooper Bowles decided to depart from Utah Highway Patrol's Policy.

In the wake of Brady v. Maryland, 373 U.S. 83 (1963), a tremendous number of

cases have dealt with the ramifications of the destruction of evidence in light of the Brady court's ruling that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment irrespective of the good faith or bad faith of the prosecution. While it cannot be argued that any State agent literally destroyed evidence, Defendant urges this Court to recognize that Trooper Bowles' actions have the same net result.

#### **ISSUE NUMBER 4: DISSIPATION OF REASONABLE SUSPICION**

Once Trooper Bowles chose to give a warning citation to Defendant Flynn, he permitted her to exit his patrol vehicle, gave her a warning citation and returned all of her other documents, he has capitulated that all reasonable suspicion of any criminal activity had dissipated. Flynn was leaving when Bowles stopped her again and asked for more information. Utah law makes clear that any police detention must be justified by reasonable suspicion of a crime; police detention is no longer justified after reasonable suspicion dissipates. See State v. Hansen, 2002 UT 125, ¶ 31, 63 P.3d 650 (stating that once the reason for the traffic stop has been resolved, i.e., reasonable suspicion has dissipated, "[a]ny further temporary detention . . . constitutes an illegal seizure"). The Fourth Amendment does not allow officers to prolong a flawed encounter. State v. Morris, 2009 UT App 181.


It is simply logical that an officer gives a driver a warning citation, returns her paperwork, and she begins to leave, that the officer's previous suspicions, supported by whatever observations he has already made, are now dissipated; otherwise, the officer would not give the citation and documents to the driver, which is a clear indication of the end of the traffic stop.

## CONSLCUSION

The State's evidence in this case must be suppressed. The officer had no legal basis to make a traffic stop. His mistake of law is not an excuse. Even if the officer had established probable cause to search the vehicle, he had no authority to conduct a warrantless search; there were no exigent circumstances. Since a "totality of the circumstances" is the required standard in determining whether there were sufficient articulated facts to permit the detention, the Trooper's microphone failure, in violation of his own agency's policy, has eliminated many of those facts from being objectively reviewed, and prompts a **Brady** concern that exculpatory evidence has been withheld or destroyed. Finally, any facts amounting to reasonable suspicion had dissipated enough for the officer to give the driver a warning and by all appearances, to leave; his re-stopping and re-detaining of the Defendants after the dissipation of suspicion was a violation of their rights.

WHEREFORE, Defendants Pray this Court to Order the Suppression of all Evidence seized by the State in this matter.

DATED this 21<sup>st</sup> day of September, 2009.



Edward D. Flint  
Attorney for Defendant Juma

SIXTH DISTRICT COURT

2009 NOV 17 PM 4:10

CLERK

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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

IN AND FOR SEVIER COUNTY, STATE OF UTAH

---

STATE OF UTAH,	:	MEMORANDUM IN OPPOSITION
	:	TO DEFENDANT'S
Plaintiff,	:	MOTION TO SUPPRESS
vs.	:	
RAMON A. JUMA,	:	
DOB: 03/08/72	:	Case No. 091600075
Defendant.	:	Judge Wallace A. Lee

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The State of Utah submits the following Memorandum in opposition to Defendant's Motion to Suppress Evidence and requests that the Court deny Defendant's Motion.

FACTS

1. On March 31, 2009, a Tuesday, at approximately 9:30 a.m., Trooper Nick Bowles was sitting in the median conducting traffic patrol on I-70.

2. The Trooper's position was east of Salina approximately one quarter-mile east of the eastbound on-ramp. His cruiser is facing west monitoring eastbound traffic.

Memorandum in Opposition to Defendant's Motion to:



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Defendant's Motion to Suppress  
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3. To the south and east of the Trooper's location, behind him, at a distance of twenty feet, Utah Department of Transportation (UDOT) crews were working on a highway traffic sign for the eastbound lanes. Three trucks and a loader were parked or working on the shoulder, off the roadway to the right of the eastbound lanes. All of the vehicles which had amber emergency lights were flashing.

4. One UDOT truck was parked west of the sign with one half of the vehicle on the gravel shoulder and one half on the pavement but not in the lane of traffic. The other two UDOT trucks and loader were parked or operating off the pavement, on the gravel shoulder with flashing lights. Workers on the ground were walking around.

5. At the location of the trooper and the UDOT crew, the acceleration lane of the on-ramp had fully merged with the lane of traffic. No solid line was preventing vehicles from changing lanes at the location of the UDOT crew.

6. When Trooper Bowles first observed the Defendant's vehicle, it was accelerating up the on-ramp to merge with the eastbound freeway. A tractor-trailer semi was in front of the Defendant's vehicle and was also merging onto the freeway.

7. The Trooper observed both vehicles travel in the same lane passing the UDOT crews without slowing down or moving over. The Trooper's observations were that both vehicles were accelerating and could have moved over in their lane or safely changed lanes.

8. The trooper concluded that it was unsafe for the vehicles to travel close to the UDOT crews without slowing down, moving over in their lane or changing lanes. No evasive action was

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Defendant's Motion to Suppress  
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taken by the Defendant's vehicle of any kind even within its own lane.

9. Upon his approach to the stopped vehicle, Trooper Bowles noticed an unusual amount of luggage. The Defendant's vehicle was a Chevrolet HHR which is a small SUV with an open storage-luggage compartment. The officer testified that normal luggage for a trip as described by the Defendant would be two to four pieces of luggage. The Trooper estimated the luggage at six to seven pieces, packed as if moving instead of traveling or shopping.

10. Trooper Bowles also noticed that the occupants were unusually nervous. The Trooper admitted that most drivers are nervous during a traffic stop, but the Defendant and driver showed extreme nervousness with trembling hands and appeared frantic in their search for licenses and registration. Also noteworthy was the Defendant's effort to get out of the vehicle which the Trooper noted is very unusual and generally indicates an attempt to keep or divert the officer away from the vehicle.

11. The Trooper obtains identification from each occupant and notes the state of registration of the vehicle. The Defendant is from Kansas, the driver is from Michigan and the vehicle is registered in Nebraska. Trooper Bowles testified that this is an indicator of drug trafficking because the enterprise brings together people from different areas, renting cars, and transporting drugs across the country.

12. Trooper Bowles asks Ms. Flynn, the driver, to accompany him to his cruiser to issue a citation or warning. Once in his vehicle, he radios dispatch and begins preparing the paperwork. While

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doing so, he engages Ms. Flynn in conversation about her travel plans.

13. The Trooper learns from Ms. Flynn that they had begun their trip on Wednesday and it took two days to drive. They had stayed five days in Reno, Nevada at multiple hotels because Mr. Juma has a player's club membership by which his rooms are paid for by the casinos. Because it was only early Tuesday morning and it takes ten hours to get to Sevier County from Reno, Trooper Bowles was suspicious of her story. According to her account, she should have still been in Reno until Wednesday, the following day.

14. While waiting for dispatch after finishing the warning, Trooper Bowles went back to the Defendant's vehicle to speak with Mr. Juma. He learned from him that they had only been gone three days; stayed in San Francisco at only one hotel, a Holiday Inn. Mr. Juma specifically said they had not gone anywhere else.

15. Trooper Bowles returned to his cruiser and confronted Ms. Flynn about the California trip. Ms. Flynn is careful in her answer and tries to buy some time to think by responding with a question: "On this trip?" Once she figures out that Mr. Juma must have mentioned California instead of Reno to the Trooper, she confirms that "we did go into California for a day."

16. During this time, dispatch returned an arrest history for Mr. Juma including drug arrests. Trooper Bowles also noted that the occupants mentioned traveling from known drug trafficking sources.

17. Trooper Bowles then issued the warning to Ms. Flynn, returned her documents, and asked her if she had any questions. Ms. Flynn then got out of the vehicle. The Trooper did not tell her she

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was free to go nor that she was detained; but as she was leaving, he asked her if he could talk to her some more.

18. Trooper Bowles testified that he would not have allowed either occupant to leave. He requested permission to search the vehicle from each occupant and was denied consent. It was Trooper Bowles' intent to conduct a canine search of the vehicle and that is in fact what the officer did.

19. Trooper Bowles testified that he and his police dog, Cica, are certified by the Utah Police Officer Standards and Training Academy for narcotics detection and handling. The Trooper explained that his dog is an "agressive indicator", which means the dog will bark, paw and/or scratch to indicate narcotics.

20. In this case, Cica indicated with both barking and scratching, which is a strong indication, on the rear passenger door. Trooper Bowles then conducted a search of the vehicle and located two bags of marijuana by the rear passenger door.

21. Trooper Bowles has received extensive training in drug interdiction techniques. He is an award-winning member of the Utah Highway Patrol drug interdiction squad. He regularly consults and contributes to drug interdiction databases. He has personally made approximately 9,000 to 10,000 traffic stops resulting in around 500 drug arrests, which includes over one hundred interdictions, or "loads", of drugs.



POINTS AND AUTHORITIES

1. This was a lawful traffic stop because the officer observed a traffic violation.

It is fundamental, black-letter constitutional law that reasonable suspicion is required to stop a motor vehicle. Reasonable suspicion for a traffic stop includes a traffic violation committed in the presence of a police officer.

Among the situations that courts have identified where a police officer is justified in stopping a vehicle are: (1) when the officer observes the driver commit a traffic violation; (2) when the officer has a reasonable articulable suspicion that the driver is committing a traffic offense ...; and (3) when the officer has a reasonable articulable suspicion that the driver is engaged in more serious criminal activity, such as transporting drugs.

*State v. Lopez*, 831 P.2d 1040 (Utah App. 1992).

Trooper Bowles was monitoring eastbound traffic on a freeway with a UDOT crew on the other side of the freeway. It is beyond dispute that the shoulder of a freeway is a dangerous place to be. Indeed, that is the reason for laws designed to protect people stopped on the freeway from passing motorists such as the following statute at issue in this case:

41-6a-904. Approaching emergency vehicle - Necessary signals - Stationary emergency vehicle - Duties of respective operators.

(3) The operator of a vehicle, upon approaching a stationary tow truck or highway maintenance vehicle that is displaying flashing amber lights, shall:

- (a) reduce the speed of the vehicle; and
- (b) provide as much space as practical to the stationary tow truck or highway maintenance vehicle.

Based upon the requirements of this law, the Defendant's vehicle committed a traffic violation in the presence of a police officer. Trooper Bowles is watching eastbound traffic merge onto the freeway from the Salina on-ramp. There is no other traffic except for the Defendant and a semi truck in front of the Defendant. Both vehicles have merged onto the freeway in a traffic lane with no lane markers, signs or other vehicles impeding their travel. There are four UDOT vehicles on the side of the road with flashing lights, within feet of the travel lane. It is broad daylight, approximately 9:30 in the morning.

Despite all of these circumstances, the Defendant's vehicle did not slow down, move over or change lanes. Any or all of these evasive maneuvers could have been taken at the time because there was nothing preventing movement or slowing of the Defendant's vehicle. The officer, who was in the best position to observe the situation, testified that it was unsafe for the Defendant's vehicle to travel so close to the UDOT workers. He concluded that it was a violation of Utah Code Annotated, Section 41-6a-904(3) when the Defendant's vehicle

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did not slow down, move over in the lane or change lanes. According to the plain language of the statute, it was a violation of Utah state law and justifies the traffic stop of Defendant's vehicle.

2. Reasonable suspicion to detain defendant developed during the traffic stop.

A central and dispositive issue in this case is whether the officer had reason to continue the detention after the traffic stop was completed.

Investigative questioning that further detains the driver must be supported by reasonable suspicion of more serious criminal activity. Reasonable suspicion means suspicion based on specific, articulable facts drawn from the totality of circumstances facing the officer at the time of the stop.

*State v. Lopez*, 873 P.2d 1127 (Utah 1994) (emphasis added).

As a "totality of the circumstances" test, the Court must consider all elements that the officer considered suspicious and determine whether they, as a whole, amount to reasonable suspicion. Most importantly, the Court must weigh the facts with "deference to an officer's ability to distinguish between innocent and suspicious actions." *United States v. Wood*, 106 F.3d 942, 946 (10<sup>th</sup> Cir. 1997). This is important because a great deal of time and money is spent

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training police officers to detect crime in seemingly innocent scenarios. Even the United States Supreme Court has sanctioned deference to police officers.

When discussing how reviewing courts should make reasonable suspicion determinations, we have said repeatedly that they must look at the "totality of circumstances" of each case to see whether the detaining officer has a "particularized and objective basis" for suspecting legal wrongdoing. This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person.

*United States v. Arvizu*, 534 U.S. 266, 273, (2002) (emphasis added).

This Court should do the same by analyzing the totality of circumstances the officer relied upon to detain and question the Defendant. It is true that any one of the following factors standing alone would be insufficient to justify a detention because they are also consistent with innocent behavior. However, when they are combined into one large picture confronting a police officer, they make him suspicious of other criminal activity. Consider the following factors combined into one suspicious episode:

1. Excessive amount of baggage/luggage.
2. Unusual, extreme nervousness of occupants and frantic search for papers.
3. Defendant's attempt to divert or move officer away from open vehicle window by getting out of vehicle.

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4. Licenses and registration from various states.
5. Implausible time frame of driver's travel history.
6. Conflicting statements between driver and passenger as to:
  - a) where they stayed;
  - b) how long they stayed; and
  - c) what state they visited.
7. Driver's hesitancy in confirming Defendant's version of events about going to California.
8. Defendant's prior history of drug offenses.
9. Travel to and from known drug sources.

As the traffic stop progresses, the officer gathers these factors of suspicion from his observations and questions. He does not unnecessarily prolong the stop nor does he do anything improper in his investigation. As he issues the warning, he makes a calculation to determine if there is enough suspicion to continue the detention. This is exactly what the courts have required:

[T]he evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement. Trained officers aware of modes and patterns of operation of certain kinds of lawbreakers can draw inferences and made deductions that might well elude untrained persons.

*United States v. Mendez*, 118 F.3d 1426, 1431 (10<sup>th</sup> Cir. 1997).

We do not expect a trained and conscientious police officer to ignore all of these indicators of criminal activity. Reasonable

suspicion is more than a mere hunch. It is the cumulative effect of a collection of individual facts that combine to create suspicion. When an officer has reasonably made that evaluation, he is justified in detaining and investigating further. Trooper Bowles was correct in his assessment that these nine different factors constitute reasonable suspicion and therefore his actions to detain and question were legal.

3. A canine sniff is constitutional and constitutes  
probable cause to search a vehicle without a warrant.

It has been over twenty-five years since the United States Supreme Court upheld searches by trained narcotics dogs.

[W]e conclude that the particular course of investigation that the agents intended to pursue here - exposure of respondents' luggage which was located in a public place, to a trained canine - did not constitute a "search" within the meaning of the Fourth Amendment.

*United States v. Place*, 462 U.S. 696, 707 (1983).

The basis for this ruling is that if a person is otherwise lawfully detained, the canine sniff is simply not intrusive. In 2005, the Court extended the ruling to vehicles stopped by police because the same reasoning applies.

A dog sniff conducted during a concededly  
lawful traffic stop that reveals no information

other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment.

*Illinois v. Caballes*, 543 U.S. 1, 5 (2005).

Since a canine sniff is not a search, the fact that Trooper Bowles deployed his narcotics dog on the vehicle is not unlawful so long as the Defendant was being lawfully detained. This is the reason that the foregoing analysis of reasonable suspicion to detain was critical to this case. Because Trooper Bowles had reasonable suspicion that more serious criminal activity was afoot, he was legally justified in detaining the Defendant until that suspicion could be dispelled. The quickest, most effective and, as set forth above, legal means to do so, was running a canine around the vehicle.

Moreover, the courts have repeatedly held that a drug dog alert is probable cause to conduct an actual search of a vehicle and its compartments. Because of the automobile exception, no warrant is required. This body of law was summarized succinctly by the Tenth Circuit Court:

Once the dog "keyed", the police had probable cause to believe the automobile contained narcotics. Thereafter, the search of Stone's car and the duffel bag in which the narcotics were found was justified by the "automobile exception" to the search warrant requirement. The automobile exception justifies a police search of an automobile traveling on the

highway, including all containers therein, upon  
probable cause to believe it contains contraband.

*United States v. Stone*, 866 F.2d 359, 364 (10<sup>th</sup> Cir. 1989).

This is a straight-forward case of fundamental Fourth Amendment law. The Defendant's vehicle was stopped for a traffic violation. During the stop, the officer observed reasonable suspicion of drug trafficking. After the traffic violation was completed and consent to search was denied, Trooper Bowles exercised his discretion to detain the Defendant and conduct a canine sniff of the exterior of the vehicle. The dog, a certified narcotics canine, indicated on the vehicle and the trooper searched the vehicle pursuant to the automobile warrant exception. The Defendant has identified no constitutional violation.

4. Defendant has not shown a Brady violation.

The Defendant "urges" this Court to disregard fifty years of jurisprudence and penalize the State for the inadvertent, unintentional failure to record a few minutes of conversation. There is no prior precedent for such a proposition and the Defendant provides none nor even a good faith argument to extend existing case law. The Defendant has failed to carry any of the burden of proof or persuasion. His Motion should be denied.



5. There is no doctrine of "dissipation of reasonable suspicion."

The Defendant argues that a "police detention is no longer justified after reasonable suspicion dissipates." He cites the *Hansen* case for this rule. But, a careful reading of *Hansen* shows no such holding.

Once the purpose of the initial stop is concluded, however, the person must be allowed to depart. "'Any further temporary detention for investigative questioning after [fulfilling] the purpose for the initial traffic stop'" constitutes an illegal seizure, unless an officer has probable cause or a reasonable suspicion of a further illegality.

*Hansen*, 63 P.3d at 660.

The *Hansen* decision simply reiterates the age-old rule that once the purpose of the traffic stop has been satisfied, the driver must be released unless reasonable suspicion of other criminal activity is observed. There is nothing in the case about the dissipation of reasonable suspicion. In fact, the idea that reasonable suspicion or probable cause dissipating is illogical and incomprehensible. If a crime has been or is being committed, neither the passage of time nor circumstances can change the fact that it was committed. Suspects are arrested and prosecuted every day for crimes that occur years in the past. For the same reasons reasonable suspicion of criminal activity

does not dissipate. It may become stale if the Defendant were to leave the scene, return home, change cars, empty the car, etc. However, reasonable suspicion of criminal activity at the scene of a traffic stop does not dissipate. It is either confirmed or dispelled by further investigation.

The Defendant takes his cue for a "dissipation" theory from the recent case of *State v. Morris*, 214 P.3d 883 (Utah App. 2009). The following is the quote:

And Utah law makes clear that any police detention must be justified by reasonable suspicion of a crime; police detention is no longer justified after reasonable suspicion dissipates. See *State v. Hansen*, 2002 UT 125, Paragraph 31, 63 P.3d 650 (stating that once the reason for the traffic stop has been resolved, i.e., reasonable suspicion has dissipated, "[a]ny further temporary detention ... constitutes an illegal seizure").

*Morris*, 214 P.3d at 887.

As is clear from the language of the Court, "dissipated" means the same thing as "dispelled" or "resolved" as the Court puts it. But it has no application to this case. The Defendant is arguing that reasonable suspicion of drug trafficking dissipated inside the police car before the officer did anything to dispel or "resolve" it. Using the Defendant's vernacular, reasonable suspicion in this case could not "dissipate" until the officer had done something to

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investigate drug trafficking. Since he chose to use a canine sniff to do so, the reasonable suspicion did not "dissipate" until the dog was finished, and since the dog indicated, thereby creating probable cause to search, reasonable suspicion did not dissipate.

The Defendant's Motion should be denied in its entirety.

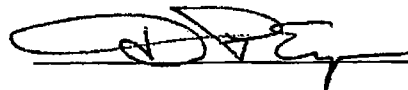
DATED this 17<sup>th</sup> day of November, 2009.

  
DALE P. EYRE  
Sevier County Attorney

MAILING CERTIFICATE

I hereby certify that a full, true and correct copy of the above and foregoing MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS was placed in the United States mail at Richfield, Utah, with first-class postage thereon fully prepaid on the 17<sup>th</sup> day of November, 2009, addressed as follows:

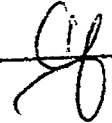
Mr. Edward D. Flint  
Attorney at Law  
455 East 400 South, Suite 100  
Salt Lake City, Utah 84111



SIXTH DISTRICT COURT

2010 MAR -4 PM 4: 16

CLERK



**DISTRICT COURT, STATE OF UTAH  
SEVIER COUNTY**

895 East 300 North, Richfield, Utah 84701  
Telephone: (435) 896-2700; Facsimile: (435) 896-8047

**STATE OF UTAH,**

Plaintiff,  
vs.

**RAMON A. JUMA,**

Defendant.

**MEMORANDUM DECISION AND  
ORDER ON DEFENDANTS' MOTION TO  
SUPPRESS**

Case No. **091600075**  
**091600076**

Assigned Judge: **Wallace A. Lee**

**STATE OF UTAH,**

Plaintiff,  
vs.

**DIAMOND K. FLYNN,**

Defendant.

On 11 August 2009, Defendant Juma filed a Motion to Suppress Evidence. On 28 August 2009, Defendant Flynn filed a Notice of Joinder in Motion to Suppress, joining Defendant Juma's motion. On or about 22 September 2009, Defendant Juma filed Defendant's Supplemental Memorandum Regarding Evidence Suppression.

Also, On 22 September 2009 the Court conducted an evidentiary suppression hearing. On

17 November 2009, the State filed a Memorandum in Opposition to Defendant's Motion to Suppress. On 6 January 2009, Defendant Juma filed a request to submit for decision.

This motion is now ready for a decision.

#### **DECISION**

Defendants' Motion to Suppress Evidence should be denied.

#### **FINDINGS OF FACT**

1. On 31 March 2009, at approximately 9:30 a.m., Trooper Nick Bowles, with the Utah Highway Patrol was conducting traffic patrol on Interstate 70 near Salina, Utah.
2. Trooper Bowles was in the median near mile post 58, approximately one quarter-mile east of the Salina on-ramp.
3. Trooper Bowles observed a black, four-door Chevrolet sedan enter the freeway behind a semi-trailer going eastbound. Both the semi and the black Chevrolet remained in the right (outside) lane as they passed several Utah Department of Transportation maintenance vehicles on the side of the road. The left (inside) lane was unoccupied.
4. Trooper Bowles did not see either vehicle move over in their lane or even crowd the center line.
5. The UDOT crew was on the south side of the freeway approximately a quarter mile past the on ramp. The UDOT crew appeared to be replacing a roadside sign. There were

several vehicles on the gravel shoulder and one was up on the shoulder, partially on the pavement. Trooper Bowles felt it was dangerous to the safety of the UDOT workers for the black Chevrolet not to move over as it passed. At that point, Trooper Bowles decided to stop the black Chevrolet vehicle.

6. At both the preliminary hearing and the suppression hearing Trooper Bowles testified he stopped the black Chevrolet for failure to move over for an emergency vehicle.
7. Defendant Juma was in the front passenger seat of the black Chevrolet, which he had rented, and Defendant Flynn was driving.
8. As Trooper Bowles approached the black Chevrolet vehicle, he could see there were only two occupants. The luggage compartment of the vehicle was visible as the trooper approached and he immediately noticed that the entire rear portion of the vehicle was filled with luggage. In Trooper Bowles' experience, the amount of luggage in the vehicle was excessive for two people.
9. Trooper Bowles made contact with Defendants who seemed unusually nervous and even frantic. Their hands were shaking as they retrieved their identifying documents and handed them to the trooper.
10. Trooper Bowles obtained identification for both Defendants which showed the driver, Flynn, was from Michigan and the passenger, Juma, was from Kansas. The vehicle was a

rental and had been rented in Nebraska. Trooper Bowles testified that in his training and experience it is common in drug trafficking situations for the participants and vehicles to all be from different states.

11. Trooper Bowles then spoke with both defendants separately. Their stories about their travel together did not match and this caused Trooper Bowles further concern.
12. At about this time, Trooper Bowles received information from dispatch indicating Defendant Juma had a previous criminal history involving drugs.
13. Trooper Bowles then gave Flynn a written warning notice, returned her identification card and then, as she started to leave, Trooper Bowles asked if he could talk to her a little more. Flynn agreed to speak to Trooper Bowles.
14. Trooper Bowles told Flynn about the things he had noticed during the course of the stop that caused him to suspect drugs. He asked if he could search the vehicle. Flynn told Trooper Bowles he would have to speak to Mr. Juma because he was the person who rented the vehicle. Trooper Bowles then asked Juma for permission to search and Juma refused.
15. At this point, Trooper Bowles decided to deploy his trained canine. At the time, Trooper Bowles was a certified canine handler. The dog was also a trained and certified drug detection dog. As Trooper Bowles took the dog around Defendants' vehicle, the dog

alerted, indicating drugs in the rear of the vehicle, and at the right, rear bumper, then the dog more aggressively indicated the presence of drugs by barking and scratching on the rear passenger door of the vehicle.

16. Based on this indication by the canine, Trooper Bowles decided to search the vehicle where he discovered marijuana on the floorboard, near the rear passenger door, and in the rear of the vehicle.

### ANALYSIS

The Fourth Amendment provides that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . ." *United States v. Mendenhall*, 446 U.S. 544, 550 (U.S. 1980).

The Court first considers whether there was a seizure and subsequent search. The Court concludes there was a seizure because stopping an automobile and the resulting detention is a seizure within the meaning of the Fourth Amendment of the United States Constitution. *State v. Steward*, 806 P.2d 213, 215 (Utah Ct. App. 1991).

The Utah Court of Appeals in *State v. Lovegren*, 829 P.2d 155, 157-158 (Utah Ct. App. 1992), held, "the stopping of an automobile is constitutionally justified if the stop is incident to a lawful citation for a traffic violation." The central issue in this motion is whether Trooper Bowles had a reasonable articulable suspicion to stop Defendants' vehicle.



Defendants argue Trooper Bowles did not have reasonable suspicion to stop them. Trooper Bowles stopped their vehicle because it failed to move over and change lanes while approaching and passing the UDOT crew on the eastbound right shoulder of Interstate 70. Defendants argue there is no requirement for the driver of a vehicle to change lanes when passing a highway maintenance vehicle.

The State argues that Defendants' vehicle did not slow down, move over, or change lanes and thus Defendant Flynn violated Utah Code Ann. Section 41-6a-904(3), and created a dangerous situation for the UDOT crews. However, Trooper Bowles testified at both the Preliminary Hearing and the Evidentiary Hearing that he stopped Defendants because they failed to move over to the left lane for an emergency vehicle.<sup>1</sup> The UDOT vehicles with their amber colored lights flashing are not "authorized emergency vehicles."<sup>2</sup> The UDOT vehicles with their amber lights flashing are governed by Utah Code Ann. Section 41-6a-904(3) which states: "The operator of a vehicle, upon approaching a stationary tow truck or highway maintenance vehicle that is displaying flashing amber lights, shall: (a) reduce the speed of the vehicle; and (b) provide

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<sup>1</sup> Utah Code Ann. Section 41-6a-904(2) states: "The operator of a vehicle, upon approaching a stationary authorized emergency vehicle that is displaying alternately flashing red, red and white, or red and blue lights, shall: ... (c) if traveling in a lane adjacent to the stationary authorized emergency vehicle and if practical, with due regard to safety and traffic conditions, make a lane change into a lane not adjacent to the authorized emergency vehicle.

<sup>2</sup> Utah Code Ann. Section 41-6a-102 defines "Authorized emergency vehicle" as fire department vehicles; police vehicles; ambulances; and other publicly or privately owned vehicles designated by the commissioner of the Department of Public Safety.

as much space as practical to the stationary tow truck or highway maintenance vehicle.”

In this case, the Court finds Trooper Bowles made a good faith mistake. He testified that he stopped Defendants' vehicle for failure to move over for an emergency vehicle. He mistakenly thought there had been a violation of Utah Code Ann. Section 41-6a-904(2). However, the UDOT vehicles are not “authorized emergency vehicles.” Therefore, Section 41-6a-904(3) applies in this case. Section 41-6a-904(3) does not require motorists to change lanes when approaching and passing highway maintenance vehicles. Rather, motorists are only required to reduce speed and provide space for the maintenance vehicle.

In a similar case, *State v. Applegate*, 194 P.3d 925, 931 (Utah 2008), the Utah Supreme Court held, “[an officer’s] subjective understanding of the law is irrelevant. Instead, all that matters is that [the officer is] able to point to specific and articulable facts regarding [a suspect’s] conduct which, taken together with rational inferences, created a reasonable suspicion of a violation of the traffic laws.” See also, *State v. Friesen*, 988 P.2d 7 (Ut App 1999).

In this case, the Court finds that though Trooper Bowles obviously made a mistake about the specific traffic law involved, he still had a reasonable articulable suspicion Defendants had committed a traffic violation. Trooper Bowles knew Defendant Flynn failed to move over when approaching and passing the UDOT crew. Trooper Bowles testified he believed this created a dangerous condition and constituted a violation of traffic laws sufficient to make a stop.

In other words, the Court finds no evidence to suggest Trooper Bowles stopped Defendants for a contrived or improper purpose. Instead, he had a reasonable articulable suspicion that Defendants had violated a traffic law. His subjective understanding (or misunderstanding) of the law is irrelevant. Therefore, the Court finds the initial stop and detention of Defendants in this case was lawful.

The next issue in this case is whether the continued detention and questioning of Defendants after termination of the initial traffic stop was justified by additional reasonable suspicion. After carefully considering all the evidence, the Court concludes Trooper Bowles had reasonable articulable suspicion of more serious criminal activity.

Though many of the traditional factors which typically lead to a finding of reasonable suspicion, such as unusual odor, vehicle alterations or physical indications of impairment, are absent in this case, the Court finds the following articulated facts sufficient to establish reasonable suspicion in the totality of the circumstances: (1) Defendants were both from different states and the car was rented in a third state; (2) there was an inordinate amount of luggage for two people; (3) Defendants were both unusually nervous; (4) Defendants' stories about the course and timetable of their travel did not match; and (5) dispatch reported Defendant Juma had a criminal history which included drug offenses.

None of these factors, on their own, is enough for reasonable suspicion. However,

viewing them in the totality of the circumstances facing Trooper Bowles at the time of the stop, the Court finds they are enough to justify further detention to ask about drugs and to seek permission to search the vehicle. The Court finds the resulting detention reasonably related in scope to the initial detention. At that point, the Court finds Trooper Bowles also had reasonable suspicion to deploy his narcotics dog to sniff the exterior of the vehicle.

The Court finds the additional detention was not unduly lengthy or unreasonable, nor did it occur at an unreasonable place or time. After the dog indicated the presence of drugs, the Court finds Trooper Bowles had probable cause not only to continue and expand the detention, but to search the vehicle without a warrant.

It is well settled that exposure to a trained canine does not constitute a search within the meaning of the Fourth Amendment because it does not expose non-contraband items that would otherwise be hidden from public view. *United State v. Place*, 462 U.S. 696, 707 (U.S. 1983); *Illinois v. Caballes*, 543 U.S. 405, 409 (U.S. 2005). However, once a narcotics dog indicates the presence of narcotics, the police have probable cause to conduct a search. *United States v. Stone*, 866 F.2d 359, 364 (10<sup>th</sup> Cir. 1989).

Indeed, the Utah Court of Appeals has held "the automobile exception to the warrant requirement provides that "[i]f a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without

STATE v. JUMA, Case No. 091600075  
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Memorandum Decision and Order on Defendants' Motion to Suppress  
Page 10

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more.'" *State v. Despain*, 173 P.3d 213, 217 (Utah Ct. App. 2007), (quoting *Maryland v. Dyson*, 527 U.S. 465, 467, 119 S. Ct. 2013, 144 L. Ed. 2d 442 (1999)).

Therefore, the Court concludes that based upon the strong indication by the canine in this case, Trooper Bowles had sufficient probable cause to search the vehicle. Accordingly, Defendants' Motion to Suppress should be denied.

#### CONCLUSION AND ORDER

For the reasons listed above, Defendant Juma and Defendant Flynn's Motion to Suppress is denied. The Clerk is directed to set this case for a scheduling conference.

DATED this March 29, 2010.

**Wallace A. Lee**

Digitally signed by Wallace A. Lee  
DN: cn=Wallace A. Lee, c=US, o=Sixth District Court,  
email=wlee@email.utcourts.gov  
Reason: I am approving this document  
Date: 2010.03.04 15:17:54 -07'00'

WALLACE A. LEE, Judge

**CERTIFICATE OF SERVICE**

On March 4, 2010, a copy of the above document was sent to the following  
by the method indicated:

**Addressee**

**Method**

☐ Edward Flint  
Jonathon Grimes  
Attorneys for Defendant Juma  
455 East 400 Sout, Ste. 100  
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☐ Fax  
☒ Courthouse box

Carol Frank

SIXTH JUDICIAL DISTRICT  
SEVIER COUNTY, STATE OF UTAH

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STATE OF UTAH,	:	MINUTES
Plaintiff,	:	ARRAIGNMENT
	:	SENTENCE, JUDGMENT, COMMITMENT
	:	
vs.	:	Case No: 091600075 FS
RAMON A JUMA,	:	Judge: PAUL D LYMAN
Defendant.	:	Date: June 15, 2010

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PRESENT

Clerk: carolcf

Prosecutor: DALE P EYRE

CASEY W JEWKES

Defendant

Defendant's Attorney(s): EDWARD D FLINT

DEFENDANT INFORMATION

Date of birth: March 8, 1972

Audio

Tape Number: NCR Tape Count: 931-944

CHARGES

1. POSS W/ INTENT TO DIST C/SUBSTANCE - 3rd Degree Felony  
Plea: Guilty - Disposition: 06/15/2010 Guilty

ARRAIGNMENT

The Information is read.

Advised of rights and penalties.

Defendant is arraigned.

Defendant waives right to a trial by jury.

HEARING

TAPE: NCR COUNT: 931-

Mr Flint advised the Court he will be filing an appeal on Judge Lee's denial of Flint's motion to suppress. Def will enter a guilty plea today to count 1 in return for the State's dismissal of count 2. This plea will be conditionally.

Mr Eyre states since Def is entering his plea conditionally, that the bail bond previously posted will be exonerated. In lieu of serving jail time, Def will need to pay a new bail bond, surrender his passport, and not travel outside of the

United States. Def has signed a waiver of rights form. Def states he is prepared to contact a bail bondsman today.

The Court accepts the stipulated agreement between parties and notes Mr Flint will file his appeal today. Def is released upon the posting of \$10,000 bond. Def is to surrender his passport within the next 2 weeks to Mr Eyre.

Def is not to leave the United States. Def is not to violate any laws.

SENTENCE PRISON

Based on the defendant's conviction of POSS W/ INTENT TO DIST C/SUBSTANCE a 3rd Degree Felony, the defendant is sentenced to an indeterminate term of not to exceed five years in the Utah State Prison.

The prison term is suspended.

SENTENCE JAIL SUSPENDED NOTE

All jail time is suspended upon posting of a new \$10,000 bond.

SENTENCE FINE

Charge # 1	Fine: \$9283.00
	Suspended: \$9283.00
	Surcharge: \$
	Total Fine: \$9283.00
	Total Suspended: \$9283.00
	Total Surcharge: \$0
Total Principal Due:	\$0
	Plus Interest



Edward D. Flint 4573  
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SIXTH DISTRICT COURT

2010 JUN 15 AM 10:18

CLERK 

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SIXTH JUDICIAL DISTRICT COURT, STATE OF UTAH  
SEVIER COUNTY, RICHFIELD DEPARTMENT

---

STATE OF UTAH,	:	NOTICE OF APPEAL
	:	
v.	:	
	:	
RAMON A JUMA,	:	Case No. 091600075
Defendant.	:	Hon. Wallace A. Lee

---

Notice of Appeal  
  
CD31921259  
pages: 2  
091600075 JUMA, RAMON A

COMES NOW, Defendant Ramon A. Juma, through Counsel Edward D. Flint, and, pursuant to Rule 3(d) of the Utah Rules of Appellate Procedure, hereby appeals the judgment of the Sixth Judicial District Court in Richfield, Sevier County, the Honorable Judge Wallace A. Lee.

Defendant appeals the final order of the above-mentioned Court denying Defendant's Motion to Suppress Evidence to the Utah Supreme Court/Utah Court of Appeals; and Defendant's conditional guilty plea to Count 1 of the Information: to wit, possession of marijuana of more than one pound and less than a hundred pounds with intent to distribute, a third degree felony, in violation of U.C.A. §58-37-8(1)(a)(iii), to the Utah Supreme Court/Utah

000089

Court of Appeals.

DATED this 14<sup>th</sup> day of June, 2010.



---

Edward D. Flint

Edward D. Flint 4573  
Jonathon W. Grimes 10462  
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SIXTH DISTRICT COURT

2010 JUN 15 PM 4:10

CLERK

SIXTH JUDICIAL DISTRICT COURT, STATE OF UTAH  
SEVIER COUNTY, RICHFIELD DEPARTMENT

STATE OF UTAH,	:	DEFENDANT'S MOTION TO
	:	STAY THE EXECUTION OF
Plaintiff,	:	SENTENCE, PENDING APPEAL
	:	
vs.	:	
	:	
RAMON A. JUMA,	:	Case No.: 091600075
	:	
Defendant.	:	Judge Wallace A. Lee
	:	

COMES NOW the Defendant, Ramon A. Juma, through counsel of record,  
Edward D. Flint, and hereby MOVES this Court, pursuant to Rule 27, Utah Rules of  
Criminal Procedure, for an Order Staying execution of the Sentence and Commitment in  
the case pending appeal, and states:

Defendant has filed a Notice of Appeal and Application for a Certificate of  
Probable Cause in the District Court contemporaneously with this Motion:

Defendant is entitled to have this Court issue a Certificate of Probable Cause that  
the defendant is not likely to flee or fail to appear as required, during the pendency of the  
appeal and that defendant does not pose a danger to the safety of any other person in the

Defendant's Motion to Stay the Execution of Sentence

community, and should be released under conditions imposed by the Court pursuant to Rule 27 (g), U.R. Cr.P.

DATED this 15<sup>th</sup> day of June, 2010.

  
\_\_\_\_\_  
Edward D. Flint

# **REFERENCED EXCERPTS OF THE PRELIMINARY HEARING TRANSCRIPT**

**ORIGINAL TRANSCRIPT**

IN THE SIXTH JUDICIAL DISTRICT COURT OF  
SEVIER COUNTY, STATE OF UTAH

STATE OF UTAH,

Case No. 091600075

Plaintiff,

vs.

RAMON A. JUMA,

Defendant.

~~~~~  
PRELIMINARY HEARING TRANSCRIPT  
~~~~~

SIXTH DISTRICT COURT  
2010 JUN 30 AM 10:20  
CLERK

AUGUST 11, 2009

BEFORE THE HONORABLE WALLACE A. LEE

FILED  
UTAH APPELLATE COURTS

JUL 09 2010



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50 West Broadway, Suite 900, Salt Lake City, Utah 84101

901000

1 A. B-O-W-L-E-S.

2 THE COURT: Thank you. Mr. Eyre, you  
3 may proceed when you are ready, Sir.

4 MR. EYRE: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY-MR.EYRE:

7 Q. Sgt. Bowles, were you on duty on March  
8 31<sup>st</sup> of this year?

9 A. Yes.

10 Q. Were you involved in the investigation  
11 of the defendants Juma and Flynn?

12 A. Yes.

13 Q. What caused you to come into contact  
14 with these people?

15 A. As I was sitting stationary in the  
16 Interstate 70 median near milepost about 58, I  
17 observed a vehicle traveling in the outside lane.  
18 There were some UDOT workers on the side of the  
19 road fixing a sign, basically right close to where  
20 I was. They did have their overhead lights on.  
21 The vehicle passed their location without moving  
22 over for the UDOT workers, so I stopped the  
23 vehicle.

24 Q. Did they stop immediately?

25 A. That I recall, yes.



1 Q. Okay, what did you notice upon your  
2 approach to the vehicle?

3 A. I noticed a very large amount of luggage  
4 inside the vehicle. As I interacted with the  
5 occupants, they seemed to be very nervous, kind of  
6 rushing to get their documents. The feeling that I  
7 got from them was that they was trying to get me  
8 away from the vehicle.

9 Q. You mentioned they are nervous, more  
10 than usual?

11 A. Yes, very much, so.

12 Q. What other observations did you notice  
13 about them, their body movements, anything that  
14 showed nervousness?

15 A. Trembling hands, and then again, it  
16 seemed to me that they were very rushed in trying  
17 to provide documents to me. It almost seemed like  
18 they were frantic trying to find the documents.

19 Q. Okay. Who was driving the vehicle?

20 A. Ms. Flynn.

21 Q. And did she provide any documentation to  
22 you?

23 A. She provided a Michigan identification  
24 card. She informed me that she did not have a  
25 license.





1 Q. And Mr. Juma was a passenger in the  
2 vehicle?  
3 A. Correct.  
4 Q. Did he provide any documentation?  
5 A. Yes, he did.  
6 Q. What did he provide?  
7 A. He provided a Kansas driver's license,  
8 along with the rental contract for the vehicle.  
9 Q. Okay. Did you determine who had rented  
10 the vehicle?  
11 A. Mr. Juma had.  
12 Q. Okay. After obtaining this  
13 documentation, what did you do next?  
14 A. I returned to my vehicle and asked Ms.  
15 Flynn to come back with me.  
16 Q. Okay. Did you speak with her while you  
17 were in your vehicle?  
18 A. Yes, I did.  
19 Q. What did you talk about?  
20 A. Their travels, her association with Mr.  
21 Juma.  
22 Q. At any point, did you make any contact  
23 with Mr. Juma?  
24 A. Yes, I did.  
25 Q. Did you have any discussions with him?



1 about a few more things.

2 Q. Did she agree?

3 A. Yes, she did.

4 Q. Did you talk to her?

5 A. I did.

6 Q. Did you ask her for consent to search  
7 the vehicle?

8 A. Yes, I did.

9 Q. What did she say?

10 A. She informed me that the vehicle is not  
11 hers. So I kind of clarified with--since Mr. Juma  
12 is the renter, if she wanted me to talk to him  
13 about it. She agreed to that.

14 Q. Oh, okay. Did you then talk to Mr.  
15 Juma?

16 A. Yes, I did.

17 Q. Did you ask him for consent to search?

18 A. Yes.

19 Q. What did he say?

20 A. He--I don't recall the exact words, but  
21 basically he denied me consent to search the  
22 vehicle.

23 Q. Okay, what did you do next?

24 A. I informed him that I was going to  
25 deploy my narcotics detective canine on the



1 exterior of the vehicle.

2 Q. Okay. Are you a canine officer?

3 A. I was at the time.

4 Q. Okay, and did you deploy your dog?

5 A. Yes.

6 Q. The dog was with you in your car?

7 A. Yes.

8 Q. Okay, and what happened after the dog  
9 was deployed?

10 A. When I deployed the dog on the outside  
11 of the vehicle, he alerted to the odor of narcotics  
12 and gave an indication of the rear passenger door.

13 Q. Okay, with that indication, what did you  
14 do?

15 A. I conducted a search of the vehicle.

16 Q. What did you find in the vehicle?

17 A. I found three different bags containing  
18 marijuana, total weights about 33 pounds. There  
19 was one bag on the floor board by the rear door  
20 that my canine had indicated on. There were also  
21 two bags in the rear of the vehicle.

22 Q. Why do you believe 33 pounds of  
23 marijuana is intent to distribute marijuana?

24 A. Through my career, I have had many drug  
25 arrests. Typical amounts for a user amount would



1 be anywhere from a gram to sometimes a heavy user  
2 would have up to an ounce. The transportation  
3 amounts that I've dealt with have been in pounds.  
4 Thirty-three pounds of marijuana, especially coming  
5 out of northern California, is a very large load of  
6 marijuana.

7 Q. Did you find any other drugs during  
8 this investigation?

9 A. Once I had taken Mr. Juma to the jail,  
10 one of the jailers had conducted a search of him,  
11 found a user amount of cocaine on his person.

12 Q. And by user amount, how much would you  
13 say that was?

14 A. Somewhere in grams. I don't recall the  
15 exact weight.

16 Q. But it was less than an ounce?

17 A. Yes.

18 Q. It was less than a pound?

19 A. Yes.

20 Q. Anyone perform any preliminary tests on  
21 the cocaine?

22 A. Yeah, a nic test was conducted on the  
23 cocaine and it tested positive.

24 Q. Okay, and how were you able to identify  
25 the 33 pounds as marijuana?



1 Q. Okay. Can you start with that last  
2 comment about the identification of the contraband?  
3 You said that you identified the three bags as  
4 having marijuana based upon their appearance and  
5 smell?

6 A. Correct.

7 Q. Have they been tested otherwise to  
8 determine?

9 A. I'm not sure if they have been submitted  
10 yet or not.

11 Q. Okay. The cocaine, were you involved in  
12 determining that was cocaine?

13 A. Yes, the nic test.

14 Q. Did you do a field test on that?

15 A. Yes.

16 Q. Okay, now you weren't there when that  
17 was found on Mr. Juma?

18 A. No, I was not.

19 Q. Okay. Let's go back in time to where  
20 you first spotted the vehicle. They were getting  
21 on an on ramp?

22 A. They were coming from--They had actually  
23 come from the on ramp onto the interstate.

24 Q. Did you see them coming up the on ramp?

25 A. Yeah.



1 Q. Is the on ramp down at Salina?

2 A. Yes.

3 Q. And they were going eastbound?

4 A. Correct.

5 Q. Now, you could tell they were coming up  
6 the on ramp how?

7 A. I seen them.

8 Q. Was there a semi-truck in front of them?

9 A. Yes.

10 Q. Okay. Was the semi-truck going slowly?

11 A. I don't recall its speed.

12 Q. Would you say it was substantially below  
13 freeway speed?

14 A. It's hard to say there. There's a lot  
15 of semis that come up that ramp pretty quick.

16 Q. Okay, but it takes a while for a semi-  
17 truck pulling a trailer to reach freeway speed,  
18 so--

19 A. Not necessarily.

20 Q. Okay. The car behind the semi-truck was  
21 what? It was a black Chevrolet, is that correct?

22 A. Yes.

23 Q. And it was directly behind the semi-  
24 truck pulling a trailer?

25 A. Yes.



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1 Q. It didn't try to pass the truck?

2 A. It eventually did once it passed my  
3 location, but at that time, no, it did not.

4 Q. Okay, but while it was on the on ramp,  
5 you saw it directly behind the semi-trailer?

6 A. As it was coming up the on ramp, yes.

7 Q. Okay, where was the UDOT crew?

8 A. On the--would be the south side of the  
9 highway.

10 Q. And where, in relationship to the on  
11 ramp? Weren't they right at the top of the on  
12 ramp?

13 A. I would say a quarter mile passed it.

14 Q. Just passed the on ramp?

15 A. Yes.

16 Q. A quarter mile, that would be 1,000,  
17 1,200 feet?

18 A. Yes.

19 Q. Okay, and were they parked on the  
20 pavement, or on the shoulder on the dirt or grassy  
21 area?

22 A. Well, there were several vehicles there.  
23 I think a couple of them were down in the grass.  
24 I believe one of them was up on the shoulder.

25 Q. Okay, and by shoulder, do you mean the



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1 pavement, or off of the pavement?

2 A. The shoulder in that area is probably  
3 about 12 feet wide. I believe it was partially on  
4 the shoulder.

5 Q. Okay, so to the right of the fog line,  
6 there's a paved area, and then it becomes unpaved.

7 A. Correct.

8 Q. Are you saying that that area had about  
9 12 feet of paved area to the right of the fog  
10 line?

11 A. Roughly ten to twelve feet, probably.

12 Q. Okay, and was that UDOT vehicle parked  
13 on that shoulder area substantially out of the way  
14 of traffic in the thru lane?

15 A. It was out of the lane.

16 Q. Were there workers outside of the  
17 vehicles working on a sign?

18 A. Yes.

19 Q. Okay, and the UDOT vehicles had flashing  
20 lights?

21 A. Yes, it did.

22 Q. What color are those lights?

23 A. Orange.

24 Q. Orange, amber, yellow?

25 A. Yes, I believe they are orange.





1 Q. Orange lights. Did any of them have  
2 red lights, like you have on your patrol car?

3 A. Not that I'm aware of, no.

4 Q. Did any of them have blue lights, like  
5 you have on your patrol car?

6 A. No.

7 Q. Were any of them flashing white lights?

8 A. Not that I know of.

9 Q. You didn't see any red and white in  
10 combination or red and blue in combination?

11 A. As far as I recall, it was all the  
12 orange lights that UDOT typically has.

13 Q. Standard lights that you would flash as  
14 your emergency lights on an automobile, for that  
15 matter?

16 A. I don't know of too many automobiles  
17 that have the orange lights on top of their  
18 vehicles.

19 Q. Now, were these the rotating lights, or  
20 just flashing lights?

21 A. I believe they--I don't know what kind  
22 they have. They have the light bars on top of  
23 their vehicles. Whether they rotate or flash, I  
24 don't know.

25 Q. Okay. I always get confused with the



1 terms of orange and yellow. When the code  
2 describes amber lights, would you say those were  
3 the amber lights?

4 A. You know, what somebody says is orange  
5 could be amber. I don't know.

6 Q. Amber, yellow, orange, but they were the  
7 lights on a standard highway maintenance vehicle?

8 A. Yes.

9 Q. They weren't the emergency lights that  
10 you would find on police, fire or paramedic?

11 A. Correct.

12 Q. Okay. Now, was that semi-truck pulling  
13 a trailer still in front of the black Chevrolet?

14 A. Yes.

15 Q. And did the semi-truck pulling the  
16 trailer, did it make a lane change to the left  
17 lane?

18 A. No, it did not.

19 Q. Okay, so the semi-truck pulling the  
20 trailer also, in your opinion, should have moved  
21 over to that unoccupied left lane?

22 A. Yes.

23 Q. But you chose to only pull over the  
24 black Chevrolet?

25 A. Yes.



1 Q. Is that because you saw out of state  
2 license plates on it?

3 A. No, it's because I'm not a commercial  
4 vehicle officer. I typically deal with passenger  
5 vehicles.

6 Q. But it's the same violation, though,  
7 isn't it?

8 A. Yes, it is.

9 Q. Okay, same citation, same violation?

10 A. Yes, but I'm much more familiar with  
11 passenger vehicles.

12 Q. Do you know of another law enforcement  
13 vehicle that was parked at the bottom of that on  
14 ramp?

15 A. No, I do not.

16 Q. Were you in radio communication with any  
17 other officers prior to observing the black  
18 Chevrolet?

19 A. I'm always--I always have that  
20 capability, but I had not spoken with anybody, no.

21 Q. In the minute or two before seeing the  
22 black Chevrolet, did you have any radio contact  
23 with another patrol car?

24 A. No.

25 Q. Did another officer or patrol car from



1 have to drive since Ms. Flynn did not have a  
2 license.

3 Q. Okay, and did you know that at the  
4 rental vehicle before she came back to your car?

5 A. Yes.

6 Q. Okay, so both of them were out of the  
7 vehicle at that point?

8 A. Yes. I asked Ms. Flynn to step out as  
9 Mr. Juma was walking around to the driver's side.

10 Q. Okay, and you had Ms. Flynn come back  
11 to your patrol vehicle?

12 A. Yes.

13 Q. Had her sit in the front passenger seat?

14 A. Yes.

15 Q. And you ran the information on both of  
16 them based on the identification documents that  
17 they gave you?

18 A. Correct.

19 Q. Now, during that time you were waiting  
20 for the information, were you expecting to receive  
21 that information by radio dispatch, or on your  
22 computer?

23 A. By radio.

24 Q. And did you, in fact, receive that  
25 information?



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1 outside of the vehicle are not recorded?

2 A. Correct.

3 Q. Alright. Now, in fact, after having  
4 received the information that there were no  
5 warrants or wants for either of these individuals,  
6 that the rental company had not reported the car  
7 stolen or missing, you decided to give Ms. Flynn a  
8 warning citation, is that correct?

9 A. Correct.

10 Q. In fact, in your report, you say that  
11 the very first thing you told her when you asked  
12 her to come back to your patrol vehicle was that  
13 you told her you were going to give her a warning  
14 citation for the violation, is that correct?

15 A. Once we were inside of my vehicle, yes.

16 Q. Okay, so that was your intent from the  
17 very beginning, was to give her a warning--

18 A. Yes.

19 Q. --as long as they both checked out and  
20 didn't have any warrants?

21 A. Yes.

22 Q. Okay. Now, they don't have any  
23 warrants. The car is not stolen. You do give her  
24 a warning citation?

25 A. Yes.



1 Q. Give her back all of her paperwork, the  
2 car registration, and tell her she can leave?

3 A. I don't believe I ever told her that  
4 she could leave.

5 Q. Okay, you gave them back to her and did  
6 you have any conversation with her at all when you  
7 gave them back to her?

8 A. I believe I handed them to her and  
9 asked her if she had any questions.

10 Q. Did she have any questions?

11 A. I don't recall any at this point.

12 Q. Pardon?

13 A. I don't recall any questions at this  
14 point.

15 Q. Okay. So you had given her a warning  
16 citation and her documents. She exited her  
17 vehicle. Was she free to go at that point?

18 A. No.

19 Q. Why not?

20 A. Because I felt like I had developed  
21 reasonable suspicion to believe that criminal  
22 activity was being taken place.

23 Q. Okay, and you asked her if she would  
24 consent to speaking with you further?

25 A. Yes.



1 Q. She spoke with you a little bit further?

2 A. Yes.

3 Q. You asked her if she had any weapons or  
4 illegal items in the vehicle?

5 A. Yes.

6 Q. Specifically asked if there was any  
7 narcotics in the vehicle or illegal drugs?

8 A. Yes.

9 Q. She said no.

10 A. Yeah.

11 Q. Okay, then you asked her if you could  
12 search?

13 A. Yes.

14 Q. She said it's not for her to decide.  
15 It was Mr. Juma's rental vehicle?

16 A. Something to that effect, yes.

17 Q. Okay, then you asked Mr. Juma the same  
18 questions. Are there any weapons or illegal items  
19 in the car, and he said no?

20 A. Correct.

21 Q. You asked him, specifically, are there  
22 any narcotics or illegal drugs, and he said no?

23 A. Correct.

24 Q. And you asked him if you could search  
25 the vehicle, and he said no?



1 A. Correct.

2 Q. Okay, then you got the dog out?

3 A. Yes.

4 Q. Alright. You deployed the dog. I  
5 noticed on the video that you were signaling to the  
6 dog by tapping areas of the vehicle for the dog to  
7 sniff?

8 A. Basically, the way that I deploy my  
9 canine is I will move my hand along the vehicle  
10 indicating where I do want him to sniff? I mean,  
11 he's a dog. He can't look at a vehicle and say,  
12 hey, I bet there's a high probability that there's  
13 air coming out of that. I show him, I detail the  
14 vehicle when I go around it, yes.

15 Q. And you went around the car 360 degrees  
16 from the back all the way around to the side, to  
17 the front, the other side and back to the back  
18 again all the while pointing to where the dog  
19 should sniff and the dog sniffed?

20 A. Yes.

21 Q. Dog did not give an indication during  
22 any of those times? He didn't indicate?

23 A. He did indicate.

24 Q. During the first trip around the car?

25 A. I don't recall if it was the first or





# **REFERENCED EXCERPTS OF THE SUPPRESSION HEARING TRANSCRIPT**

ORIGINAL TRANSCRIPT

IN THE SIXTH JUDICIAL DISTRICT COURT OF  
SEVIER COUNTY, STATE OF UTAH

STATE OF UTAH,

Case No. 091600075

Plaintiff,

vs.

RAMON A. JUMA,

Defendant.

~~~~~  
SUPPRESSION HEARING TRANSCRIPT  
~~~~~

SEPTEMBER 22, 2009

BEFORE THE HONORABLE WALLACE A. LEE

CLERK

2010 JUN 30 AM 10:20

SIXTH DISTRICT COURT

FILED  
UTAH APPELLATE COURTS

JUL 09 2010



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2010061

1 Q. And of those arrests, how many contained  
2 amounts that you considered intent to distribute or  
3 trafficking loads?

4 A. Intent to distribute, I would say over  
5 100 actual. What we consider to be a pipeline or  
6 a load of narcotics, I would say roughly 70.

7 Q. Okay. Now, at the time of the  
8 preliminary hearing, you indicated that you had  
9 stopped the vehicle for failing to yield to an  
10 emergency vehicle, is that correct?

11 A. Failing to move over for it, yes.

12 Q. Alright. Now, at the time, what were  
13 you doing when you first observed the vehicle that  
14 you stopped?

15 A. Just sitting in the median watching the  
16 traffic.

17 Q. Okay. Were you pointed and facing the  
18 direction that the car you stopped was traveling,  
19 so it was coming toward you?

20 A. I was facing it as it was coming  
21 towards me. So I was facing west. The vehicle  
22 was eastbound.

23 Q. Now, this emergency vehicle was a UDOT  
24 vehicle, right?

25 A. Yes, several of them.



1 Q. Okay. Describe the scene of the UDOT  
2 vehicles. First of all, how far away were they  
3 from you?

4 A. I would say maybe 20 feet down the road  
5 behind me.

6 Q. East of your position?

7 A. Yes.

8 Q. And describe what you saw with the UDOT  
9 vehicles. What's going on there?

10 A. Well, there were several that are UDOT  
11 pick-up trucks that are the white trucks with the  
12 orange or yellow lights on the top of them. There  
13 was--they had one of their loaders there, and it  
14 looked to me like they were repairing a sign, one  
15 of the big signs that, you know, tells you how far  
16 Denver and a couple other locations were.

17 Q. One of the traffic signs along the  
18 highway?

19 A. Yes.

20 Q. Were these orange or yellow lights on?

21 A. Yes.

22 Q. Do you think it was on all the  
23 vehicles?

24 A. That I recall, yes.

25 Q. Okay. How about the workers? Were



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1 A. No.

2 Q. There's two vehicles, a semi and a  
3 passenger car. What do you see? Describe what you  
4 see?

5 A. I observed both vehicles traveling in  
6 the outside lane, and they both appear to be  
7 picking up speed getting on the freeway. Neither  
8 vehicle moved over for the DOT units. Both passed  
9 them in that right lane. Both of them had ample  
10 opportunity to move over.

11 Q. So you don't recall anyone on the inside  
12 lane?

13 A. There was none.

14 Q. Impeding their moving over?

15 A. No.

16 Q. What about the speed? Were they slowing  
17 down?

18 A. Did not appear to be, no.

19 Q. In your opinion, could they have moved  
20 over?

21 A. Oh, definitely.

22 Q. Do you recall them moving over to at  
23 least the center line and crowding the center line?

24 A. No.

25 Q. Did you note any evasive action taken by



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1 the driver of the car?

2 A. No.

3 Q. In your opinion, should they have moved

4 over?

5 A. I think they should have.

6 Q. Did you feel like it was unsafe?

7 A. Yes.

8 Q. Did you immediately initiate a stop?

9 A. Yes. As soon as I caught up to the

10 passenger vehicle, I did initiate a stop.

11 Q. Okay, and did they pull over

12 immediately?

13 A. That I recall, yes. I don't remember

14 any long delay.

15 Q. Okay. Now, at the preliminary hearing,

16 you indicated several things that caught your

17 attention. The first, excessive luggage in the

18 vehicle?

19 A. Yes.

20 Q. What kind of vehicle is this?

21 A. It's a Chevy HHR.

22 Q. What kind of vehicle is that?

23 A. It's Chevy's model of a PT Cruiser. It

24 kind of looks like an SUV, just smaller.

25 Q. Does it have a trunk?



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1 asks to do that, and that kind of furthered my  
2 suspicion that they wanted me away from the  
3 vehicle. By him stepping out, I have to move away  
4 from the vehicle to keep, you know, a safe  
5 distance.

6 Q. Did he go to the trunk or the back  
7 portion to get his license?

8 A. No, he did not.

9 Q. Okay. Did you obtain identification  
10 from both occupants?

11 A. Yes, I did.

12 Q. What did you notice about that?

13 A. I noticed that they were from pretty  
14 different areas. The driver, Ms. Flynn, provided  
15 me with a Michigan identification card. Mr. Juma  
16 provided me with a Kansas driver's license.

17 Q. What about the vehicle? Where was it  
18 registered out of?

19 A. Nebraska.

20 Q. And what's significant about these  
21 people being from different areas of the country?

22 A. I found that it's common for drug  
23 traffickers to have multiple locations involved  
24 with the situation. They will grab a driver from  
25 here, a passenger from here, a car from here.



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1 works outside the vehicle, outside your cruiser?

2 A. Yes.

3 Q. And when is it activated?

4 A. When I turn on my emergency lights.

5 Q. When is it deactivated?

6 A. When I turn it off.

7 Q. I'm going to show you as State's Exhibit

8 Number 1. What is that?

9 A. That is a copy of my video from this

10 stop.

11 Q. Okay, did you have that made?

12 A. Yes.

13 Q. I would like to offer Number 1.

14 THE COURT: Any objection, Mr. Neeley?

15 MR. NEELEY: No objection.

16 THE COURT: Mr. Flint?

17 MR. FLINT: No objection.

18 THE COURT: You both agree. State's

19 Exhibit 1 is received without objection.

20 Q. Alright, I have nothing further. Thank

21 you.

22 THE COURT: Thank you. Mr. Neeley?

23 Mr. Flint? Whichever, I'm sorry.

24 MR. FLINT: Judge, I'll go first, if

25 you don't mind. I'm going to ask the Court's



1 A. Yes.

2 Q. You didn't observe any traffic

3 violation?

4 A. Not at that time, no.

5 Q. Okay, and do you recall your previous

6 testimony at the preliminary hearing when I asked

7 you about the UDOT vehicles, is that correct?

8 A. Yes, I remember you asking about that.

9 Q. You say there were several UDOT

10 vehicles?

11 A. Yes.

12 Q. Were they parked on the pavement or on

13 the gravel?

14 A. As I testified before, there was one

15 that was partially on the pavement. The rest of

16 them were kind of off into the dirt.

17 Q. And they had their yellow lights

18 flashing?

19 A. Yes.

20 Q. And none of them had red lights

21 flashing?

22 A. No.

23 Q. None of them had a combination of red

24 and white or red and blue lights flashing?

25 A. I don't know of any that are equipped



1 have explained that discrepancy?

2 A. No. I don't make it a point to provide  
3 each other's stories to them so that they can  
4 correct their story. I mean, it's pretty simple to  
5 me. One gives me one story, one gives me one  
6 totally different. I'm not going to go say hey,  
7 you need to change your story. He's telling  
8 something different.

9 Q. I guess, Sergeant, without beating a  
10 dead horse, what I'm getting at here is if they had  
11 been actually traveling separately, both of their  
12 stories could be correct?

13 A. If.

14 Q. Okay. When you got the dispatch  
15 information back to verify that Mr. Juma had a  
16 valid license and no warrant so he could drive the  
17 car away, because that was your intent, correct?

18 A. What's that?

19 Q. Your intent was to let Mr. Juma drive  
20 the car away and give Ms. Flynn a warning?

21 A. Yes.

22 Q. And dispatch, in fact, told you Mr. Juma  
23 did have a valid driver's license?

24 A. Yes.

25 Q. And that there were no warrants for his



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1 arrest?

2 A. Correct.

3 Q. But you also obtained from dispatch,  
4 essentially, Mr. Juma's arrest record?

5 A. Yes.

6 Q. And that arrest record then added  
7 additional suspicion?

8 A. Yes.

9 Q. Okay, and then ultimately, you received  
10 word from dispatch that, in fact, the car was truly  
11 correctly rented to Mr. Juma from an agency in  
12 Kansas, just like he said?

13 A. Yes.

14 Q. And it was due back?

15 A. Yes.

16 Q. Which would mean they would have a lot  
17 of driving ahead of them to get it back?

18 A. Yes, they would.

19 Q. They might even be late in getting it  
20 back and have to pay an extra day's rent?

21 A. Probably.

22 Q. Okay, but again, paying an extra day's  
23 rent is not all that unusual, is it, for traveling  
24 across country?

25 A. I see it occasionally, yes.



1 A. Correct.

2 Q. And you gave her the warning citation?

3 A. Correct.

4 Q. And you said, this is just a warning?

5 A. Yes.

6 Q. Okay, and she thanked you for giving her

7 a warning?

8 A. Yes, she did.

9 Q. Okay, and she opened the door?

10 A. Yep.

11 Q. And she got out of the vehicle.

12 A. Yes.

13 Q. And she was completely out of the

14 vehicle and standing on the pavement ready to go

15 get back in the car?

16 A. I believe so, yes.

17 Q. And at that point you said, hey, can I

18 ask you some more questions?

19 A. Yes.

20 Q. Or something to that effect?

21 A. Something to that effect, yes.

22 Q. Alright. In asking those questions,

23 both she and Mr. Juma denied having contraband,

24 denied having weapons?

25 A. Yes.



1 Q. And both of them declined to consent to  
2 any search?

3 A. Correct.

4 Q. Alright, and then at that point in time,  
5 you deployed the dog?

6 A. Yes.

7 Q. And based upon the dog's indication, you  
8 conducted a search?

9 A. Yes, I did.

10 Q. Now, once that dog gave you that  
11 indication, did you--both Mr. Juma and Ms. Flynn  
12 were outside of the vehicle, correct?

13 A. Correct.

14 Q. And they were far enough away from the  
15 vehicle that they couldn't have destroyed or hidden  
16 any evidence?

17 A. Sure.

18 Q. Okay, and you could have had back-up  
19 there to contain them or detain them? You could  
20 have radioed in and requested that the process  
21 start to get a warrant?

22 A. I could have I guess.

23 Q. But you specifically chose not to seek a  
24 warrant?

25 A. Yes.



**41-6a-904. Approaching emergency vehicle -- Necessary signals -- Stationary emergency vehicle -- Duties of respective operators.**

(1) Except when otherwise directed by a peace officer, the operator of a vehicle, upon the immediate approach of an authorized emergency vehicle using audible or visual signals under Section 41-6a-212 or 41-6a-1625, shall:

(a) yield the right-of-way and immediately move to a position parallel to, and as close as possible to, the right-hand edge or curb of the highway, clear of any intersection; and

(b) then stop and remain stopped until the authorized emergency vehicle has passed.

(2) The operator of a vehicle, upon approaching a stationary authorized emergency vehicle that is displaying alternately flashing red, red and white, or red and blue lights, shall:

(a) reduce the speed of the vehicle;

(b) provide as much space as practical to the stationary authorized emergency vehicle; and

(c) if traveling in a lane adjacent to the stationary authorized emergency vehicle and if practical, with due regard to safety and traffic conditions, make a lane change into a lane not adjacent to the authorized emergency vehicle.

(3) The operator of a vehicle, upon approaching a stationary tow truck or highway maintenance vehicle that is displaying flashing amber lights, shall:

(a) reduce the speed of the vehicle; and

(b) provide as much space as practical to the stationary tow truck or highway maintenance vehicle.

(4) This section does not relieve the operator of an authorized emergency vehicle, tow truck, or highway maintenance vehicle from the duty to drive with regard for the safety of all persons using the highway.

**58-37-8. Prohibited acts -- Penalties.**

**(1) Prohibited acts A -- Penalties:**

(a) Except as authorized by this chapter, it is unlawful for any person to knowingly and intentionally:

(i) produce, manufacture, or dispense, or to possess with intent to produce, manufacture, or dispense, a controlled or counterfeit substance;

(ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or arrange to distribute a controlled or counterfeit substance;

(iii) possess a controlled or counterfeit substance with intent to distribute; or

(iv) engage in a continuing criminal enterprise where:

(A) the person participates, directs, or engages in conduct which results in any violation of any provision of Title 58, Chapters 37, 37a, 37b, 37c, or 37d that is a felony; and

(B) the violation is a part of a continuing series of two or more violations of Title 58, Chapters 37, 37a, 37b, 37c, or 37d on separate occasions that are undertaken in concert with five or more persons with respect to whom the person occupies a position of organizer, supervisor, or any other position of management.

(b) Any person convicted of violating Subsection (1)(a) with respect to:

(i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second degree felony and upon a second or subsequent conviction is guilty of a first degree felony;

(ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or marijuana, is guilty of a third degree felony, and upon a second or subsequent conviction is guilty of a second degree felony; or

(iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree felony.

(c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii) may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on his person or in his immediate possession during the commission or in furtherance of the offense, the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently.

(d) Any person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree felony punishable by imprisonment for an indeterminate term of not less than seven years and which may be for life. Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.

**(2) Prohibited acts B -- Penalties:**

(a) It is unlawful:

(i) for any person knowingly and intentionally to possess or use a controlled substance analog or a controlled substance, unless it was obtained under a valid prescription or order, directly from a practitioner while acting in the course of the person's professional practice, or as otherwise authorized by this chapter;



**77-7-15. Authority of peace officer to stop and question suspect -- Grounds.**

A peace officer may stop any person in a public place when he has a reasonable suspicion to believe he has committed or is in the act of committing or is attempting to commit a public offense and may demand his name, address and an explanation of his actions.

**78A-3-102. Supreme Court jurisdiction.**

(1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States.

(2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction.

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

- (a) a judgment of the Court of Appeals;
- (b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals;
- (c) discipline of lawyers;
- (d) final orders of the Judicial Conduct Commission;
- (e) final orders and decrees in formal adjudicative proceedings originating with:
  - (i) the Public Service Commission;
  - (ii) the State Tax Commission;
  - (iii) the School and Institutional Trust Lands Board of Trustees;
  - (iv) the Board of Oil, Gas, and Mining;
  - (v) the state engineer; or
  - (vi) the executive director of the Department of Natural Resources reviewing actions of the Division of Forestry, Fire, and State Lands;
- (f) final orders and decrees of the district court review of informal adjudicative proceedings of agencies under Subsection (3)(e);
- (g) a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution;
- (h) interlocutory appeals from any court of record involving a charge of a first degree or capital felony;
- (i) appeals from the district court involving a conviction or charge of a first degree felony or capital felony;
- (j) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction; and
- (k) appeals from the district court of orders, judgments, or decrees ruling on legislative subpoenas.

(4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except:

- (a) capital felony convictions or an appeal of an interlocutory order of a court of record involving a charge of a capital felony;
- (b) election and voting contests;
- (c) reapportionment of election districts;
- (d) retention or removal of public officers;
- (e) matters involving legislative subpoenas; and
- (f) those matters described in Subsections (3)(a) through (d).

(5) The Supreme Court has sole discretion in granting or denying a petition for writ of

certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall review

those cases certified to it by the Court of Appeals under Subsection (3)(b).

(6) The Supreme Court shall comply with the requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its review of agency adjudicative proceedings.

**78A-4-103. Court of Appeals jurisdiction.**

(1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:

- (a) to carry into effect its judgments, orders, and decrees; or
- (b) in aid of its jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, School and Institutional Trust Lands Board of Trustees, Division of Forestry, Fire, and State Lands actions reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas, and Mining, and the state engineer;

(b) appeals from the district court review of:

(i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and

(ii) a challenge to agency action under Section **63G-3-602**;

(c) appeals from the juvenile courts;

(d) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;

(e) appeals from a court of record in criminal cases, except those involving a conviction or charge of a first degree felony or capital felony;

(f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;

(g) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;

(h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, parent-time, visitation, adoption, and paternity;

(i) appeals from the Utah Military Court; and

(j) cases transferred to the Court of Appeals from the Supreme Court.

(3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.

(4) The Court of Appeals shall comply with the requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its review of agency adjudicative proceedings.